

HISTORY
OF THE
PACIFIC RAILWAY CO'S.
1st MORTGAGE 30 YEAR 6 PER CENT
PARAMOUNT LIEN BONDS.

Souder

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1912

HISTORY OF THE

First Mortgage 30-Year 6 per cent Paramount Lien Bonds Having Priority
Over the Subsidy Bonds of the United States
Issued by and Assigned to

CHARLES DURKEE

from 1865 to 1869

BY THE

UNION AND KANSAS PACIFIC RAILROAD CO.,

And The

**CENTRAL AND WESTERN PACIFIC RAILROAD
COMPANY**

And by order and demand of

PRESIDENT JOHNSON

made on these Railroads.

They deposited the bonds so issued and assigned January, 1868, and January, 1869, with the Secretary of the Treasury as collateral to be surrendered at the completion of their roads.

Congress by joint resolution passed April 10, 1869, ratified and confirmed the order and demand made on the railroads by the former President and the officials of the Government for receiving the bonds and empowered **President Grant**, if need be, to demand such other security necessary for the completion of the roads.

That the Secretary of the Treasury ordered said bonds to be transferred as they became due from 1895 to 1899 to the Sub-Treasury of New York for redemption and payment by the Railroad Companies or their agents.

Demand and claim are made now for principal and interest the Sub-Treasury received in payment for the bonds, the proceeds of which was ordered to be paid to Person or Persons lawfully entitled to the same by—

PRESIDENT McKINLEY.

Feb. 8, 1898.

By **Henry J. Hastings**, Administrator *de bonus non cum testamento annexo* of the estate of **Charles Durkee**, deceased. Issued out of the Probate Court of Kenosha County, State of Wisconsin, December 19, 1911, and demand is made by his Agent, **Jacob J. Souder**, duly appointed by order of Court, December 23, 1911.

By the Hon. **George W. Taylor**, County Judge.

Of the County Court of Kenosha County,
of the State of Wisconsin.

THE WEEKLY, MILWAUKEE, WISCONSIN.
WEDNESDAY, JANUARY 26, 1870.

Hon. Charles Durkee, late Gov. of Utah Territory, died in Omaha, on the 14th instant, of pneumonia while on his way to his home in Kenosha, Wisconsin. This will be sad news to his many friends in this State.

Mr. Durkee was born in Royalton, Vt., on the 5th day of December, 1807. He had therefore just entered upon his sixty-third year, receiving a good education in the common branches, he began life as a merchant and removed to this State at an early day in its settlement, settling in Kenosha. He entered energetically into a business life, but soon became prominent in politics. He was, we believe, a member of the Territorial Legislature for one or more sessions, and in Nov., 1848, was elected a member of Congress from the first district and re-elected in Nov., 1850. On the first of February, 1855, after an exciting contest lasting through several days, Mr. Durkee was elected to the U. S. Senate for six years from the 4th of March following. The Republican party was organized in the State only some six months before this election and it had but a majority of one in the Legislature on joint ballot in the Republican caucus for the nomination of a candidate for Senator. Erasmus Cole, now Associate Justice of the Supreme Court of the State, received a large majority of the votes, but he failed to unite the party. E. D. Holton had some friends. Chancellor Lathrop some, but Durkee more than both of these, and after several ballots it was found that Durkee was the only man upon whom they could unite, and he was finally elected by just the number of votes required. The Democrats voted Bryan Kelbans, Charles Diven and James Daly, the former receiving most of the party vote.

Mr. Durkee was therefore the first Republican U. S. Senator from this State, though of Democrat antecedents, he was

a strong anti-slavery man and in the fierce contests which raged on the question of slavery during his term in Congress, he was always at his post, always true to his principles and always brave and outspoken in his warfare upon the great cause of the country—slavery. Upon the expiration of his term in 1862 he was succeeded by Totton and returned to private life. In 1865 he was appointed by President Johnson, Governor of Utah Territory, in which position he acquitted himself with credit and to the satisfaction of the Government, failing health compelled the resignation of his position and he was returning to his old home in Kenosha when death overtook him. Not brilliant as a writer or orator, he acquired and retained the confidence and respect of the people and his associates in office by his wisdom, integrity, conditions, and in behalf of what he believed was right. In his death the State has lost a good citizen and one who did her and the whole country valuable service.

THE HONORABLE JAMES R. DOOLITTLE was born in Hampton, Washington County, New York, January 3, 1815; graduated at Geneva College in 1834; adopted the profession of law, and was admitted to the Supreme Court of New York in 1837. He was District Attorney for several years for Wyoming County, New York, and removed to Wisconsin in 1851; was chosen Judge of the First Judicial Circuit of that State in 1853, but resigned in 1856. He was elected a Senator of the United States in 1857, for six years, serving as Chairman of the Committee on Indian Affairs, and as a member of the Committee on Foreign Affairs, Commerce, and Military Affairs. He was also a member of the Peace Congress of 1861. In 1863 he was re-elected for the term ending in 1869. During the summer recess of 1865, as a member of a Special Committee of the Senate, he visited the Indian tribes west of the Mississippi River.

When Mr. Doolittle moved to Racine, Wisconsin, in 1851, just ten miles from Kenosha, the home of Gov. Durkee, where he moved in 1837. When Mr. Doolittle was chosen judge of the first Judicial Circuit of that State, Kenosha County was in this circuit. Mr. Durkee was in Congress at that time; they soon became fast friends, Mr. Durkee being a merchant of large interest and Mr. Doolittle a lawyer. Mr. Durkee was elected to the United States Senate in 1885, Mr. Doolittle was elected in 1857. They served in the Senate together, and became bosom friends. Mr. Doolittle was his attorney in all matters he had in Washington and looked after his interest in his absence. This close relation as attorney and client had existed until the death of Gov. Durkee.

HISTORY OF PACIFIC RAILROAD LEGISLATION AND ORGANIZATION.

The project of a railroad to the Pacific Coast was first brought to the attention of Congress in 1846, by Asa Whitney of New York. His persistent efforts met with no reward beyond a respectful consideration of committees and vague and aimless debates in Congress. But the acquisition of new Pacific Coast possessions, and the discovery of gold in California, gave the scheme a new interest so that from 1848 to 1860 Congress addressed itself at various times to the serious consideration of the subject.

It continued to be a prominent topic of discussion and public interests in it became so general that the National Convention of both parties in 1860 adopted resolutions in favor of granting Government aid to the enterprise.

Events immediately following the election in 1860 forbode the consideration at that time. Very soon after the opening of the war, however, the necessity for closer connection and greater facilities for intercourse with the States of the Pacific Coast pressed itself upon the attention of the Government and of Congress.

It will be observed that the Hon. Charles Durkee was elected to the lower House of Congress from the first District of Wisconsin in 1848, and re-elected in 1850 serving until 1852. In 1855 he was elected to the United States Senate as a Republican six months after the Republican party was born, and served until March 4th, 1862. All during his time of service he was intensely interested in the building of Pacific railroads. The building of roads was now urgent, out of which grew the act of 1862, generous as they seemed, they were not liberal enough to induce the investment of capital sufficient for the purpose.

Very little progress had been made upon it, when work practically ceased, and the whole business was at a standstill. The next step was the application to Congress, for additional legislation, the necessity of which, for prompt action, had to be taken for by the Act of July 2, 1862, whereby Congress orders and directs that the corporation's first meeting shall be held in Bryan Hall, in the city of Chicago, Ill., the first Tuesday in September, 1862, and at this meeting resolutions were passed to raise subscriptions. The whole amount of subscription secured that day was the pitiful sum of \$2,200, hardly enough to pay the expenses for that meeting, so that Congress acted promptly on the application and passed the act of July 2, 1864, embodying the desired amendments.

The act of 1862 was in its essence a war measure; it was so regarded in all the discussions that took place upon it in the Senate and House. It was from this view of it that Mr. Lincoln took so profound an interest in its passage.

On the 29th day of October, 1863, a permanent organization of the corporation was effected, the Act of 1864 doubled the land grant and permitted the railroad companies to issue their first mortgage bonds equal in amount to the subsidy debt with a priority of lien over the Government subsidy bonds.

After the acceptance by the railroad companies Sept. 23, 1864, of the Hoxie Contract, Mr. Durkee qualified as his bondsman as required by the Interior and Treasury Departments, and when it was necessary to provide \$1,600,000 to carry on the work on the Hoxie Contract, Dr. Thos. C. Durant subscribed \$600,000, most of this was Mr. Durkee's money or that he secured besides his share of the money needed in the preliminary work and organization of companies. It was said that he was the largest individual contributor up to this time and for this and many years of service rendered he had

the promise of the railroad companies that they would assign and in compliance therewith did assign all their first mortgage paramount lien bonds lawfully prior over the Government subsidy to him, without reservation or condition.

On July 18, 1865, President Johnson appointed Mr. Durkee Governor of the Territory of Utah, and he left for his post of duty in November following, the railroads went on building their roads and received their subsidy bonds. Up to the latter part of 1866 or 1867 when the administration and Congress were divided on all Government matters, when Congress talked of impeaching the President, and the press of the country assailed the Administration on all sides. The press assailed the Secretary of the Treasury in particular, accusing him of being in league with a band of Pacific Railroad swindlers, helping them to bankrupt the country with building two streaks of rust through a barren wilderness that would not be inhabited or settled in a hundred years, and for this reason the national credit was threatened and assailed on all sides. At this time it was found that the railroads had failed or refused to make the required statement under oath as set forth in Section 5, of the Act of 1862, and the 10th and 11th sections of the amended Act of 1864, and at a cabinet meeting held the Secretary of the Treasury and the Secretary of the Interior brought the Pacific Railroad matters to the attention of the cabinet that the railroads had failed or refused to comply with the sections of the acts as aforesaid, and further stated that to their absolute knowledge, not one of the first mortgage paramount lien bonds so far issued by the railroads had been used in the building of the roads, but were in safe deposit vaults in New York. It was therefore unanimously resolved by the cabinet that no more subsidy bonds should be issued to the Pacific railroad companies until they would deposit as collateral with

the Secretary of the Treasury all their first mortgage paramount lien bonds so far issued and to be issued, and authorized and directed the President to issue an order to this effect and notify the railroad companies that until this order was complied with no more subsidy bonds or land grant patents should be issued.

When this order of the President became known, the railroad press commenced to assail the Administration shamefully, and the Secretary of State, Mr. Seward, and Secretary of the Treasury, Mr. McCulloch, in particular, threatening them with impeachment for violation of law and preventing the railroad companies from completing the roads in the time allotted them by the acts of Congress. Resolutions were offered in both Houses of Congress to impeach Mr. Seward and Mr. McCulloch, Secretaries of State and Treasury, respectively, and every effort was made to drive them out of the Cabinet, but without avail. All through the year of 1867, not one subsidy bond or land grant patent was issued to the companies after it was found the Administration could not be moved from its position, the railroad companies offered to comply with the order of the President, and on Jan. 1, 1868, the Government issued to the Union Pacific Railroad Company \$17,342,512 in subsidy bonds and delivered them to E. H. Rollins, the Secretary of the Company, and on or about the same day, E. H. Rollins, as Secretary of the Union & Kansas Pacific Railroad Companies, under a power of attorney from Charles Durkee and in the presence of his attorney, the Hon. Jas. R. Doolittle, deposited with the Secretary of the Treasury as collateral \$30,372,512, part of their first mortgage paramount lien bonds they were then entitled to under their charter and all assigned to Charles Durkee, and likewise on Jan. 1, 1869, E. H. Rollins as Secretary of the Union & Kansas Pa-

cific Railroad Companies under a power of attorney from Charles Durkee, and in the presence of his attorney, Hon. Jas. R. Doolittle, deposited with the Secretary of the Treasury as collateral, the balance of the paramount lien bonds they were entitled to under their charter to the amount of \$3,157,000, all assigned to Charles Durkee, for the Union Pacific Railroad Company \$27,229,512, and for the Kansas Pacific Railroad Company \$6,303,000, making in all for the two roads \$33,593,512 of their first mortgage paramount lien bonds so deposited with the Secretary of the Treasury, as collateral to be surrendered when the roads were reported completed.

On the same day, Jan. 1, 1868, C. P. Huntington, President of the Central & Western Pacific Railroad Company, deposited as per order of the President of the United States, under a power of attorney from Charles Durkee, and in the presence of the Hon. Jas. R. Doolittle, the attorney for Mr. Durkee, for the Central Pacific Railroad all their first mortgage paramount lien bonds they were entitled to under their charter and all assigned to Chas. Durkee, to the amount of \$25,885,120, issued from July 1, 1865, to Jan. 1, 1868, likewise the same day under a power of attorney from Chas. Durkee and in the presence of Jas. R. Doolittle, Mr. Durkee's attorney, the first mortgage paramount lien bonds and all assigned to Chas. Durkee, all the Western Pacific Railroad Co. was entitled to under their charter to the amount of \$1,970,560 issued from Dec. 1, 1865, to July 1, 1869, making in all \$27,855,680 face value, 30-year 6 per cent paramount lien bonds for the Central and Western Pacific Railroads and for the Union & Kansas Pacific Railroad \$33,539,512 they deposited at the same time and conditions as herein recited, their first mortgage paramount lien bonds making in all for the four roads the face value of \$61,395,192. All these deposits apparently were made

under protest by the railroad companies that the demand of the President of the United States was illegal and without warrant of law, but as recited before that the Administration acted under Section 5 of the Act of 1862 and Sections 10 and 11 of the amended Act of 1864. The President made repeated request to Congress by special messages for more specific law, but Congress was slow to give the President more power under the strained conditions between the Administration and Congress. However, Congress did give the Administration some relief by the Act of Jan. 25, 1868, but not what they asked for or what Congress gave President Grant, April 10, 1869. This power was given President Grant, as the debates in special session clearly show, to cure any defects or acts of the former administration; this act of April 10, 1869, also authorized and directed the President to appoint a committee of five men to go over the roads and see if the roads were finished as directed by the acts of Congress, thereupon the President appointed five men, known in history as the five eminent men. The Committee was as follows: Hiram Walbridge, E. F. Winslow, S. N. Fenton, C. P. Cornstock and J. F. Boyd, and they entered upon their duties in May, 1869, and after going over the roads returned to Washington about Oct. 1, 1869, took rooms at the Interior Department to complete their report and on Oct. 30, 1869, they filed an oracular report with the Secretary of the Interior that in the opinion of the Commissioners the requirements of the law satisfied and the designs of Congress carried out, that the roads had good and substantial road beds, etc., and on Oct. 12, 1869, the Hon. Jas. R. Doolittle arrived in Washington knowing that the commissioners would soon report. As attorney for Charles Durkee on the 14th of Oct., he called on the President and Secretary of the Treasury about the interests of Mr. Durkee, and

on Nov. 11 called again on the President and the Secretary of the Treasury and had long interviews on these matters, and on the 25th of Nov., 1869, he called again in company with C. P. Huntington and E. H. Rollins, who held the powers of attorney of Charles Durkee, respectively, and in conversation with the Secretary of the Treasury that the committee appointed by the President had made a report to the Secretary of the Interior, that the roads were finished according to the acts of Congress, and in accordance with the agreement under which they put up their collateral they thought, having complied with the law, that they were entitled to the surrender of their collateral. The Secretary answered he thought so, too, and that he would surrender it, but before he would do so he thought that inasmuch as the Interior Department had the building of the roads, that it was no more than right to notify the Secretary of the Interior that he intended to surrender the collateral deposited by the railroads and upon this decision Mr. Doolittle called on the President as per understanding had with him and the Secretary of the Treasury, and requested the President to telegraph Gov. Durkee that his resignation was acceptable. Mr. Durkee wired his resignation that same day, and the President accepted it. Mr. Durkee settled his affairs as Governor of Utah and also with the firm of J. W. Kerr & Co., in which concern he owned a large interest, and then he made his way east as fast as possible. While en route he became seriously ill and had to stop off at Omaha, where he went to a hotel and where he died on the 14th day of January, 1870, and with him died the powers of attorney. Secretary Boutwell in the meantime called the attention of the Secretary of the Interior that he proposed to surrender the collateral he held of the Pacific Railroads, but before doing so he thought he would like to call his attention to it. The

Secretary of the Interior remarked that he wanted a little time to go over the matter with his subordinates, that there had been so much scandal with the Pacific Railroads that he did not know enough about it to give a definite answer. But said, I presume I will do just what you proposed to do after I look into it. Of course with the death of Gov. Durkee matters were at a standstill, and very little was done to secure these paramount lien bonds for the reason reckless charges had been made to Congress by the press and individuals, that fabulous profits had been made by the builders of the roads and great frauds and briberies had been committed by the companies so that Congress appointed two committees, the Poland Committee, whose investigation lasted until December, 1872, and the Wilson Committee whose investigation lasted until 1873. Everybody that was in anyway connected with the building and financing the roads was a thief without proof. This investigation kept up for two or three years. When the Refunding Act was passed to refund the National Debt from a 6 per cent to a $3\frac{1}{2}$ and 4 per cent, the Pacific Railroads were included in this act for the reason the Government was responsible for principal and interest of these bonds.

Soon after the passage of the refunding act two contracts made their appearance, one of the officers of the Union and Kansas Pacific Railroads, as individuals, and the other officers of the Central and Western Pacific Railroads, as individuals claiming that these contracts were made with them by Mr. Durkee, and the parties named in the contract, setting forth their respective interest. They appeared before the Secretary of the Treasury, John Sherman, with briefs and contracts setting forth their several interests, and after a lengthy conference, the Secretary said that he wanted time to look it over and

decide what he would do. After some time Dr. Thomas C. Durant and C. P. Huntington received letters from the Secretary of the Treasury that he was perfectly willing to refund the first mortgage paramount lien bonds of the Pacific Railroads for $3\frac{1}{2}$ per cent U. S. bonds, but in doing so, the first mortgage bonds had to be transferred to the Government of the United States, that the Solicitor of the Treasury decided that the claimants, by contract, could not make a transfer of the bonds to the Government that would hold in law or would it vest the title to the bonds absolute in the Government for the reason that the bonds were all assigned to Charles Durkee without qualification, that Mr. Durkee being dead nothing short of an executor or administrator duly appointed by the Probate Court of Kenosha, Wisconsin, where Mr. Durkee's will was filed and probated, that he would suggest to the parties at interest to go to Kenosha, Wisconsin, and lay the matter before the Probate Court there with a statement under oath of the facts as they appear here, and pray the court to make an order authorizing and directing the executor or administrator to come to Washington and transfer all the first mortgage paramount lien bonds of the Pacific Railroads held by the Government and assigned to Mr. Durkee, and assign them to the Government of the United States for $3\frac{1}{2}$ per cent U. S. bonds to be issued by the Secretary of the Treasury in exchange for said bonds, and then and there divide them as per contract on file in the Department, but they failed to go to Kenosha, Wis., as requested by the Solicitor to ask the court for the order for the reason they were unwilling to make the required oath to the court as to their ownership for the reason that they had already testified before several Congressional committees they had no interest in the bonds so that they could not comply with the Secretary's request, they still

had hope that some way would open that they could get their part without going to Kenosha, Wis., before the Probate Court there, that the Secretary might be persuaded to accept their transfer, but the Solicitor refused to change his former ruling that they could not by their assignment of the bonds put absolute title in the Government.

After the passage of the act of May, 1878, known as the Thurman Act, it was thought that it would give the claimants by contract a different status before the Secretary of the Treasury, another attempt was made but the Secretary was unwilling to yield from his former decision, that the Thurman Act did not change his power, that he had all the power granted him under the refunding act, and that he was then willing to act provided the title to the bonds could be legally transferred to the Government of the United States so that they would become the sole owner of the bonds, but they were unwilling to get the consent of the court as suggested to them by the Solicitor, that they would rather wait for a new and more liberal Secretary of the Treasury. When Wm. Windom was appointed by President Garfield they had great hopes that they would succeed, but in the death of President Garfield, and later the sudden death of Wm. Windom, in New York, all the attempts by the contract holders ceased. Dr. Thomas C. Durant, who was the most persistent of all the contract owners and holders and the prime mover in the attempts to receive his share of the bonds as allotted to him by the contract, but his death soon followed and nothing further had been done by the contract holders, as far as known. In the meantime the railroads made efforts to comply with the act known as the Thurman Act of May, 1878, known as the sinking fund acts, for we find on page 34, Report of the Commissioner of Railroads for 1882, this item: "Interest paid on first mortgage

bonds having priority of lien over those of the United States, ledger folio (368), \$1,630,860.00 and cash payment being that portion of the \$1,850,000 named in section 4 of the acts of May 7, 1878, payable into the sinking fund \$450,719.36, after here follows the report itself for 1881."

Franklin H. Head, having been named as one of the executors in Mr. Durkee's will and was the only surviving executor living. In 1881, Mr. L. C. Blaisdell, whose wife was the nearest heir to Charles Durkee, secured powers of attorneys from all the known heirs of Charles Durkee, filed a petition in the Probate Court of Kenosha County, Wisconsin, where Charles Durkee's will was filed and probated praying the court to order Franklin H. Head, the surviving executor of the last will and testament of Charles Durkee, to file his account and the court so ordered, and on the 18th day of August, 1881, the said Franklin H. Head, did file his account with the court and asked lien to be discharged. The account was accepted by the court and his final discharge ordered. In his final account he asked for \$5,000 for professional services he rendered the estate in addition to the regular per cent he was entitled to as executor. These professional services consisted of settling large accounts in the State of Utah and said services also consisted in relieving said estate from liability of one hundred and fifty thousand dollars on two certain bonds of indemnity to the United States, signed by said Charles Durkee in his lifetime, that it was necessary to go to Washington, D. C., and state an account which services this executor performed. Not stating what the nature of these bonds were and for what purpose, Mr. Blaisdell entered into correspondence as attorney, in fact, for the heirs of Charles Durkee, deceased, with the Hon. Charles J. Folger, the then Secretary of the Treasury. After quite a lengthy and continued correspondence,

the Secretary of the Treasury, in April, 1884, invited Mr. Blaisdell to Washington where he met the Secretary on April 22, 1884.

C. P. Huntington, in 1889 or 1890, proposed to Mr. Blaisdell if he would give him power of attorney such as was approved by the Attorney General Brewster and a contract for one-fifth of the Central and Western Pacific Railroad bonds that he was entitled to under a contract made with Mr. Durkee he would secure the bonds from the Secretary of the Treasury, but Mr. Blaisdell refused, and nothing came of it. Mr. Blaisdell finally filed for the heirs their claims in the Court of Claims, May, 1893, against the United States, No. 18,003, after it was before the court for a year or more, the court informed Mr. Blaisdell that there being a will and a widow living the heirs could not prosecute and advised him to go to Kenosha County court, in the State of Wisconsin, and secure from the Probate Court of said county, letters of administration *de bonus non* with the will annexed. He finally, in company with one John A. Kuykendall, appeared before the said court, but the court refused to grant letters unless fuller explanation and bond was furnished to protect the county from cost. This they failed to do, but went to Salt Lake City, Utah, where John A. Kuykendall claimed a residence, and in April, 1896, made application to the then District Court Probate, Salt Lake County, Utah, for letters of administration on the estate of Charles Durkee, deceased, without filing his will for probate, and it appears that in May, 1896, the court did grant letters of administration to him, and filed a bond for one hundred dollars. Kuykendall and Blaisdell returned to Washington with a view of filing with the Court of Claims letters granted the said Kuykendall, but the court refused to let them file the letters for the reason that the said Kuykendall was not duly appointed administrator

of the estate of Charles Durkee, deceased, by any order duly made by the Third District Court Probate Division Salt Lake County, State of Utah, on the 9th day of May, 1896, or any other time, and for that reason the court dismissed him from the case; later that both could not prosecute the case at the same time.

FIRST SESSION, FIFTY-FIRST CONGRESS.

In the House, Monday, March 15, 1869.

Mr. Bingham of Ohio. I move to suspend the rules in order to introduce the joint resolution.

Joint Resolution (H. R. 26) for the protection of the interests of the United States, in the Union Pacific Railroad and for other purposes, was read first time; second time was ordered to be engrossed and read a third time, and being engrossed it was accordingly read the third time. Mr. Bingham demanded the previous question on the passage and passed.

When the Joint Resolution came to the Senate for consideration, Senator Stewart, in speaking on the resolution, remarked: I have on my desk an ornamental looking document with the name of James Fisk in large letters. I never saw him but it is alleged that he is a great rascal and that it is very important to get this work out of his hands. Again he said:

But if there is danger of an irresponsible corporation dealing out the proceeds of the bounty of the Government till it makes the Union Pacific Railroad Company insolvent and endangers the lien of the Government, we should pause in our legislation and study well its character. I would go as far as any man could ask me to go to protect the interests of the Government, nor would I injure any man, who has invested in

Pacific Railroads, but the character of the charges is such that if they should prove true, who will say that there is no danger of the first mortgage bonds being foreclosed so as to cut off the lien of the United States. If that should occur in consequence of the companies having made too large dividend or unfortunate contracts who will say that Congress will not be held responsible for it. In Feb., 1865, I think, we changed the law of 1864 so that the bonds of the companies have precedence. Now, if the companies shall become insolvent what is to be the result? These first mortgage bonds will be foreclosed and the Government lien cut off.

Senator Sherman said I believe that this joint resolution as it now stands will give us every guarantee and every security that we can possibly have for the completion of the best roads probably in the world because the whole matter will now be left so far as the inspection of the roads and its construction is concerned, to the judgment of the President of the United States, enlightened as it will be by all the information he can gain, by his commission and by the engineers he may send upon the route; and this joint resolution will authorize him to return into the possession of the Government ample security for the completion of the roads. Having accomplished that I think we have done all we can do to protect the interests of the Government.

Senator Casserly. The object being, of course, the obtaining by the President for the country ample security that these roads, each of them, shall be completed as first class roads, according to the contract, the question I desire to ask is, What is to be done in case the President should be unable or unwilling to obtain by the voluntary action of these companies the security pointed out if one or both of these companies should not be able to furnish a sufficient amount, either of the sub-

sidy bonds already issued or first mortgage bonds, what then?

Senator Sherman of Ohio. That question was examined by the Pacific Railroad Committee. In the first place the contingency is not likely to arise, because either company has sufficient bonds yet coming to it or still in the possession of the Government to make security probably amply sufficient. For instance, the Union Pacific Railroad Company has already deposited, perhaps without any authority of law, their first mortgage bonds with the United States to secure the completion of their road. This has been done not in strict pursuance of law, because there was no law probably that could have required or authorized the officers of the Government to receive them, but still as we know from the official reports that an amount of bonds has been deposited already with the Government, then there is still a large amount of subsidy bonds payable to the companies to complete their lines to the point agreed upon, so that the case put by the Senator from California is not likely to arise, and if it does arise, the law is ample now. Here the authority is given the President.

Again Senator Sherman answers the Senator from California, with the leave of my friend from California and on the suggestion of the Senator of Iowa (Mr. Harlan), I will state further that the whole grant of public lands to both these roads up to this time is withheld partly because the land has never been surveyed along the roads. No patents have been issued for any portion of that large grant so that we have in addition to the bonds now deposited and bonds to be issued hereafter or withheld all the public land granted. I do not know how valuable they are but they will be a very large and valuable security altogether.

And after the passage of the joint resolution April 10, 1869, both Houses adjourned without delay.

CHAPTER 2

THE SUMMARY OF THE RECORDS AND TESTIMONY OF THE CASE AS PRESENTED HERE.

First, that the Honorable Charles Durkee, from 1848 to 1870, while a member of both Houses of Congress and later Governor of the Territory of Utah, was intensely interested in securing favorable legislation for the building of the Pacific Railroads, in the securing and supplying the necessary money in the promotion and organizing of the companies, that he was so favorably situated and financially able in himself and through his friends to accomplish all that he did in the advancement of this stupenduous enterprise. The Record discloses that while in both Houses he was always at his post, brave and outspoken on all matters that came before both Houses. While not a lawyer, he was a merchant of rare ability, and entered energetically into a business life which brought him into public life very early in the territory of Wisconsin. He also learned early in his business life the importance of a good faithful lawyer to look after the legal end of his business, it was but natural (being associated with the Hon. James R. Doolittle in his neighborhood as a lawyer and judge, in his own town of Kenosha, and finally served with him in the United States Senate) that their confidence and friendship should grow, so that they were not only lawyer and client, but more than that, they were intimate friends. It was well that he should have secured the services of one of the

ablest lawyers of his day, to look after his business which was of such great importance and required ability and skill to manage and bring it to a successful issue. These requirements the Senator measured up to, and with the unbounded confidence Mr. Durkee had in him, made it so much easier for him to look after his interest. In April, 1867, he made arrangements to go to Europe in the interest of some railroad men, with a view of making arrangements with some foreign banking houses to take over the whole issue of these first mortgage paramount lien bonds of the four Pacific Railroads. He had letters of recommendation from Mr. McCulloch, the Secretary of the Treasury, to bankers abroad giving his views as to the probable value of these bonds, and in the meantime Mr. McCulloch informed Mr. Seward, the Secretary of State, of the Senator's intentions of going abroad.

Mr. Seward immediately got in communication with him and told him that he would like him while abroad to go to Denmark, and he gave him official authorization to treat with Denmark for the purchase of the Island of St. Thomas, he left for Europe May 11, 1867.

Upon his return from abroad he found that the strained condition between the Government and the railroads had so increased and was so intense that he saw that if these bonds were to have any value something had to be done that would bring the Government and railroads together to some understanding, that would enable the railroads to complete the roads or they would forfeit their charter and their bonds would become worthless, so he set about to get the railroads to comply with the demands of the Government, and it was through his work and influence that it was finally accomplished and the bonds were deposited as before recited. It will be observed that he was the administration leader in the Senate which

gave him power and influence with both the Government and the railroads to bring about the settlement of these difficulties which had arisen, and it was finally arranged and the bonds were deposited January, 1868. He knew that if they kept up their differences that the project would fail, and they would forfeit their charter, and with it would go the paramount lien bonds, and it would prevent him from consummating his foreign deal for the bonds he had arranged. All the efforts that were made against the Secretary of State, Mr. Seward, and the Secretary of the Treasury, Mr. McCulloch, in both Houses of Congress were held up through his influences so that no report from any committee in either House was made.

These threatenings went on all through the Johnson administration. The Senator's term expired March 4, 1869, but it was through his influence that the first session of the Fifty-first Congress was called March 4, 1869, for the express purpose to pass the Act of April 10, 1869, to cure whatever defect there was in the law, and to ratify the acts of the outgoing administration, and to vest further power in the President, etc., and to relieve the incoming administration of the trouble the former administration had as to the illegality of the demands made by the Government on the Pacific Railroad for the depositing and holding of their first mortgage paramount lien bonds, but in the passage of the Act of April 10, 1869, all the defects in the law, if there were any, placed absolute power in the President. Soon after the adjournment of Congress Senator Doolittle returned to his home in Wisconsin, he returned again to Washington on the 12th of Oct., 1869, before the commission appointed by President Grant made their report, and to attend to his client's business, which he did to the day of his death, Jan. 14, 1870, as recited before.

The statement of Senator John Sherman on the floor of the

Senate while the joint resolution which passed April 10, 1869, was under discussion, is absolute proof of the depositing of the bonds before the joint resolution was passed. He said, for instance, the Union Pacific Railroad Company has already deposited perhaps without any authority of law their first mortgage bonds with the United States to secure the completion of their roads. This has been done not in strict pursuance of law, because there was no law probably that could have required or authorized the officers of the Government to receive them, but still as we know from the official reports that an amount of bonds has been deposited.

Again, when he was Secretary of the Treasury he showed his willingness to surrender the bonds under certain conditions as set forth in a statement made before and which is part of this brief. After the Thurman Act was passed May, 1878, we find that the railroads were trying to comply with this act, for in 1881 the Union Pacific Railroad Company paid into the Treasury of the United States "for 1881 interest paid on first mortgage bonds, having priority of lien over those of the United States, ledger folio (386), \$1,630,860.00. See Report of the Commissioner of Railroads for 1882 (page 34); also paid in the sinking fund \$450,719.36 and got credit for half the transportation rendered the Government, the other half went to the credit of the subsidy debt."

Now comes L. C. Blaisdell as attorney for the heirs of Charles Durkee with letters from the Secretary of the Treasury, C. J. Folger, to Blaisdell, 1882. From Mr. French, Assistant Secretary of the Treasury, Nov. 28, 1882; Comptroller Mr. Lawrence to Blaisdell, Aug. 24, 1883; Mr. Lawrence to Blaisdell, April 3, 1884, and from Chas. Coon, Assistant Secretary of the Treasury, to Blaisdell, April 12, 1884, requesting him to come to Washington for a conference with the Sec-

retary of the Treasury, Chas. J. Folger. Upon this invitation he came to Washington and on the 22d day of April, 1884, said Blaisdell was presented by the Hon. Joseph G. Cannon to the Chief Clerk of the Treasury Department, Amos Webster, with instructions to call together such officials as the papers seem to require and to present said Blaisdell to the Secretary of the Treasury, C. J. Folger, Attorney General Brewster, Secretary of State Frelinghuysen, and was presented to quite a number of other officials of the Treasury Department that were present at this meeting when Secretary Folger exhibited all the Pacific Railroad bonds, and remarked to Attorney General Brewster: "Judge, they are all assigned to one Chas. Durkee."

The following affidavits were placed on file in the Court of Claims of nearly all the parties that were present at this interview who saw the bonds and the assignment on the bonds to Chas. Durkee. The first that filed his affidavit was:

A. U. Wyman, Assistant U. S. Treasurer, affidavit on file.

E. B. Daskam, clerk, Treasury Department, affidavit on file.

Wm. Fletcher, clerk, Treasury Department, affidavit on file.

Amos Webster, Chief Clerk, and Assistant Attorney General, affidavit on file.

Chas. Parkham, stenographer, Treasury Department, affidavit on file.

Dr. Thomas Robinson, Solicitor of the Treasury in 1884, was present and saw the bonds and assignment to Charles Durkee; swears that he saw the bonds and assignment before and after this meeting while Solicitor; affidavit on file.

Scott Howell, Des Moines, Iowa, Blaisdell attorney, swears that he was present at the interview with the Solicitor of the Treasury at which records of the delivery of the bonds to the Secretary of the Treasury was shown; affidavit on file.

Hon. Senator S. M. Cullum of Ill., affidavit on file.

Representative Joseph G. Cannon, Ill., affidavit on file.

Hon. J. F. Outhwite, ex-member of Congress, swears as to the transaction before the House Committee on Pacific Railroads held shortly after the death of Chief Justice Waite; affidavit on file.

Hon. W. M. Springer, ex-member of Congress from Ill., affidavit on file.

Hon. Wm. H. Armstrong, Commissioner of Railroads from 1881 to 1885, swears as to the order he received from Secretary Folger as to what he is to do hereafter with regard to the first mortgage paramount lien bonds of the Pacific Railroads; affidavit on file.

All these men testified from personal knowledge of the facts as sworn to and filed in the Court of Claims by Mr. Blaisdell, and afterwards sworn to before the Sub-Committee of the Senate on Pacific Railroads March 19 and 21, 1896, and filed and recorded in Senate Document No. (314).

All this testimony and statements filed by Mr. Blaisdell and his witnesses was never disputed by the Government at any time nor did they attempt to produce witnesses at any time to refute the testimony produced and filed both in their department, Court of Claims, and before the Senate Sub-Committee on Pacific Railroads.

We also produce as witness Thomas J. Abel, who was examined before Dudley T. Hassan, an Examiner in Chancery, and sworn on the 20th day of August, 1901, that he was present when the oath was administered to Mr. Blaisdell before the Senate Sub-Committee of the United States on Pacific Railroads, and present when Mr. Blaisdell testified and filed his sworn statement with the Committee, March 19 and March 21, 1895.

We now present :

William R. Russell, being first duly sworn according to law, before Dudley T. Hassan, Examiner in Chancery, on the 14th day of November, 1901 ; that he was a clerk in the Treasury Department for twenty years, and had charge of the bond vault in the Treasury office ; that the first mortgage lien bonds of the Union, Kansas Central and Western Pacific Railroads were in the vault he had charge of ; that they were sent to the Assistant Treasurer at New York by messenger for the purpose of redemption by the railway companies, being usually sent in advance of their maturity. I took some of them to New York myself and delivered them to the Assistant Treasurer at the Sub-Treasury at New York. The first were dated in 1865 and were 30-year bonds. They began to mature in 1895 from that time on to 1899 and were sent out as fast as they became due.

Again, they were Union Central, Eastern Division of the Union, Kansas, Sioux City and Western Pacific Railroad bonds.

My information is not as clear on the Sioux City bonds as to the ownership, therefore I make the amount \$61,395,192 (Souder).

We now present Cecil Clay, Chief Clerk of the Department of Justice, who was sworn before Dudley T. Hassan, Examiner in Chancery, Sept. 3, 1901, who does depose and say that his duties are to receive all incoming mails, superintend the filing of all records and recording all correspondence in the Department and all outgoing mail ; that he could not make any statement of any statements or reports that were filed in the Department without the permission of the Attorney General. See his affidavit.

That the bonds come into the hands of the Secretary of the

Treasury at the time and under the conditions as recited in the statement that they come there by law and were held as COLLATERAL as stated, the death of Mr. Durkee brought about this unfortunate condition, as recited in the statement.

We have the evidence that these bonds were taken out of the vaults of the Treasury Department by order of the Secretary of the Treasury as they become due, and sent to the Sub-Treasurer of New York for payment by the railway companies, and we have good reason to believe that they were paid by the companies. Various attempts have been made to secure the bonds or the value thereof by various parties as will be seen in the statement filed herewith in all these efforts that were made we find that the heirs of Charles Durkee made a long and continued attempt to make the collection and while before the Court of Claims by their representative attorney the court finally decided that there being a will and a widow living the heirs cannot prosecute nor collect; that the home of Mr. Charles Durkee was in Kenosha, Kenosha County, Wisconsin, where he was buried, and where his will was filed, proved and probated; that nothing short of an administrator *de bonus non* with the will annexed could prosecute or represent the estate, and therefore would dismiss the case without prejudice.

Part of the Annual Report of the Attorney General for Year
of 1898.

We now present the settlement with the Pacific Railroads with the Government by order of the President:

On the 8th day of February, 1898, under the power vested in the President by an act of Congress, entitled "An Act authorizing the investigation of the book accounts and methods

of railroad which have received aid from the United States, and for other purposes," passed March 3, 1887, President McKinley issued an executive order which, after reciting among other things as follows: "Whereas, in the opinion of the President, it is deemed necessary to the protection of the interest and preservation of the security of the United States in respect of its said lien and mortgage to redeem and clear off the aforesaid paramount liens and incumbrances by paying the sums lawfully due in respect thereof out of the Treasury, so that the United States shall thereupon become and be subrogated to all rights and securities heretofore pertaining to liens and mortgages in respect of which such payments shall be made," authorized the Secretary of the Treasury to pay out of the Treasury to the person or persons lawfully entitled to receive the same amounts lawfully due upon the prior mortgages upon the Eastern and Middle Division of said railroad out of any money in the Treasury not otherwise appropriated.

Part of the letters of administration of the Kenosha County Court, in Probate.

STATE OF WISCONSIN,)
County of Kenosha. { ss:

THE STATE OF WISCONSIN, TO ALL TO WHOM THESE PRESENTS SHALL COME, AND ESPECIALLY TO HENRY J. HASTINGS, OF THE SAID COUNTY, GREETING:

Know ye that, whereas Charles Durkee, late of the City of Kenosha, in said County, died testate, and being at the time of his death a legal resident of said County, by means where-

of the proving and allowing of his Last Will and Testament, and granting Administration of all and singular, the goods, chattels, rights, credits and estate whereof he died possessed, and also auditing, allowing and finally discharging the account thereof, was and is within the jurisdiction of our county court of said county; and,

Whereas the Last Will and Testament of the said Charles Durkee, deceased, was approved, allowed and admitted to probate in said county court, and said estate duly administered therein, and the accounts of the executors thereof were allowed and they were discharged from their trust, and the sole surviving executor is not now a resident of this State, and it appears that certain assets of said deceased never came into the hands of the executors of his Will, and have never been administered upon, and Henry J. Hastings being duly appointed as Administrator *de bonis non cum testamento annexo* has given bond as such Administrator as required by law, which has been approved and filed in said court;

In testimony whereof, we have caused the seal of our said County Court to be hereunto affixed.

WITNESS the Hon. George W. Taylor, Judge of said Court, at the City of Kenosha, in said County, this 19th day of December, A. D. 1911.

[SEAL.]

GEORGE W. TAYLOR,
County Judge.

KENOSHA COUNTY COURT—IN PROBATE.

IN THE MATTER OF THIS LAST
WILL AND TESTAMENT OF } PETITION.
CHARLES DURKEE, DECEASED. }

The petition of Henry J. Hastings, of said County, respectfully represents that he is the Administrator *de bonis non*

cum testamento annexo of the estate of Charles Durkee, deceased, duly qualified and acting as such; that he knows of no assets belonging to said estate except from information derived from J. J. Souder, whose affidavit is presented herewith; that without the assistance of Mr. Souder he would be utterly unable to discover any assets belonging to said estate.

At a regular term of said County Court for Kenosha County, State of Wisconsin, held at the Court House on the 23rd day of December, A. D. 1911, during said term..

In part of the court's order orders and directs the employment of the said Jacob J. Souder to secure the employment of such special agents, the settlement of such claims, and the discovery of such assets, in negotiating settlements, and securing services of special agents and counsel, it being understood that said Jacob J. Souder and any persons employed by him shall have no power to incur any expense which shall be a charge against said Administrator or against said estate, other than such contingent fees.

By the Court.

GEORGE W. TAYLOR,
County Judge.

On December 23, 1911, Henry J. Hastings entered into contract with said Jacob J. Souder employing him as his agent for the purpose aforesaid.

HENRY J. HASTINGS,
Administrator.

JACOB J. SOUDER,
His Agent.

CHAPTER 3

ACT OF JULY 12, 1862.

AN ACT to amend an act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first meeting of the commissioners named in the act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of same for postal, military, and other purposes," approved July second, eighteen hundred and sixty-two, and of the five commissioners directed by said act to be appointed by the Secretary of the Interior, shall be held at Bryan Hall, in the CITY OF CHICAGO, IN THE STATE OF ILLINOIS, ON THE FIRST TUESDAY OF SEPTEMBER NEXT, AT TWELVE O'CLOCK AT NOON. A notice of said meeting, to be signed by at least ten of the commissioners named in said act, shall be published at least once a week during the next six successive weeks commencing on the twentieth of July, one thousand eight hundred and sixty-two, in one daily newspaper in each of the cities of Boston, New York, Philadelphia, Cincinnati, Chicago, and St. Louis, and no other notice of said meeting shall be requisite.

Approved July 12, 1862.

This meeting was held on the day prescribed by this act and the effort made to secure money by cash and subscription at

that time resulted in securing the pitiful sum of \$2,200, all told, hardly enough to defray all the expenses of the meeting.

ACT OF MARCH 3, 1865, AND AMENDMENT TO ACT
OF JULY 2 1864.

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and to amend an act amendatory thereof, approved July second, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section ten of said act of July second, eighteen hundred and sixty-four, be so modified and amended as to allow the Central Pacific Railroad Company, and the Western Pacific Railroad Company of California, the Union Pacific Railroad, the Union Pacific Railroad Company, eastern division, and all other companies provided for in said acts of the second of July, eighteen hundred and sixty-four, to issue their six per centum thirty years' bonds, interest payable in any lawful money of the United States, upon their separate roads. And the said companies are hereby authorized to issue, respectively, their bonds to the extent of one hundred miles in advance of a continuous completed line of construction.

SEC. 2. *And be it further enacted,* That the assignment made by the Central Pacific Railroad Company of California to the Western Pacific Railroad Company of said State, of the right to construct all that portion of said railroad and telegraph from the city of San Jose to the city of Sacramento, is hereby ratified and confirmed to the said Western Pacific Railroad Company, with all the privileges and benefits of the several acts of Congress relating thereto and subject to all the conditions thereof; *Provided,* That the time within which the said Western Pacific Railroad Company shall be required to

construct the first twenty miles of their said road, shall be one year from the first day of July, eighteen hundred sixty-five, and that the entire road shall be completed from San Jose to Sacramento, connecting at the latter point with the said Central Pacific Railroad, within four years thereafter.

Approved March 3, 1865.

New York, October 7, 1864.

Whereas H. M. HOXIE, Esq., of the State of Iowa, has a certain contract, bearing date the eighth day of August, 1864, for the construction of a portion of the road of the Union Pacific Railroad Company, which contract the said Hoxie has agreed to assign to Thomas C. Durant, Esq., of the city of New York, or to such party or parties as he may designate by agreement, bearing date the thirtieth day of September, 1864, the terms of which assignment form a part of this agreement: Now, therefore, we, the undersigned, hereby agree to take an interest in the said contract to the extent set opposite our respective names, depositing at the same time, in the hands of said Thomas C. Durant, twenty-five per centum in cash on the interest so subscribed. And the parties hereto agree one with the other, that should default be made in payment of the balance of the interest so subscribed as required, the party so defaulting shall not be entitled to any further interest in said contract than the amount paid bears to the amount subscribed. It is understood that the amount subscribed for the carrying out this contract shall be one million six hundred thousand dollars.

Thomas C. Durant, six hundred thousand dollars; C. S. Bushnell, four hundred thousand dollars; H. S. McComb, one hundred thousand dollars; H. W. Gray, two hundred thousand dollars, etc., etc.,

C.

Know all men by these presents, that I, Herbert M. Hoxie, for and in consideration of one dollar, to me in hand paid, the receipt whereof is hereby acknowledged, and for divers other good and valuable considerations me thereunto moving, do hereby sell, assign, transfer, and make over unto John Duff, trustee, all and singular, the agreements between the Union Pacific Railroad Company and myself, made by and contained in a certain proposition in writing, signed by me and dated August 8, 1864, and an acceptance thereof by said company, under its seal, dated September 23, 1864, both which proposition and acceptance are hereto annexed; and also all my rights under said agreement, and all moneys, property, privileges, payments, benefits, and advantages to me or to my heirs, representatives, or assigns by said agreement provided for or secured, with full power to use my name whenever necessary or proper for obtaining, receiving, or enforcing the said rights, moneys, property, privileges, payments, benefits, and advantages as fully as I myself could do the same; subject, nevertheless, to my agreement with the Credit Mobilier of America, dated the 15th of March, 1865, and all my rights thereunder.

In witness whereof I have hereunto set my hand and seal this fifteenth day of March, one thousand eight hundred and sixty-five.

HERBERT M. HOXIE. (L. S.)

(United States internal-revenue stamp, \$1, canceled.)

N. B.—1, 24, "March" written on erasure before execution.

Witness:

BENJAMIN F. BUNKER.

Whereas, Herbert M. Hoxie and the Union Pacific Railroad Company have entered into an agreement by means of

the foregoing writings (namely, a proposition from said Hoxie dated August 8, 1864, and an acceptance thereof, dated September 23, 1864) :

Now these presents witness that the Credit Mobilier of America, in consideration of one dollar, to them in hand paid, the receipt whereof is hereby acknowledged, and for divers other good and valuable considerations them thereunto moving, do hereby covenant and agree to guarantee, and hereby do guarantee, to and with the said Union Pacific Railroad Company, that the said Herbert M. Hoxie, or his representatives or assigns, shall and will, well, truly, and perfectly perform and fulfill the said agreement in all things on his part to be done or performed, according to the terms and true intent of said agreement, as in said foregoing writings contained.

In witness whereof, the said Credit Mobilier of America have caused these presents to be sealed with their corporate seal and signed by their presidents, this fifteenth day of March, one thousand eight hundred and sixty-five, at their agency in the city of New York.

THOMAS C. DURANT,
President.

Attest :

B. F. BUNKER,
Assistant Secretary.

Memorandum of an agreement made the 15th day of March, 1865, between the Credit Mobilier of America, a corporation organized under the laws of the State of Pennsylvania, of one part, and Herbert M. Hoxie, of the other part.

Whereas, by certain writings hereto annexed, and forming part of these presents, a contract has been made by and between the Union Pacific Railroad Company and said Hoxie ;

And whereas said Hoxie has partly performed the same :

Now, in consideration of the premises, and of the mutual grants and agreements herein contained, the parties to these presents grant and agree as follows :

Said Credit Mobilier agrees to execute to said company a guarantee of the performance of said contract by said Hoxie, and also to make to said Hoxie all advances of money which may be necessary to provide and pay for labor, materials, services, and all other expenses and charges in the construction of the railroad, and other performance of said contract on said Hoxie's part ; and also to provide for, secure, and obtain all subscriptions to capital stock required by said contract from said Hoxie. Said Hoxie agrees to, and hereby does, assign to said Credit Mobilier all his right to have and receive from said company securities, stocks, moneys, profits, and payments due or to become due for constructing the railroad, or other performance of said contract, upon said Hoxie's being paid for all work done and materials furnished, as by adjustment certificates of the engineer or settlement made in December last ; and he hereby appoints said Credit Mobilier his lawful attorney irrevocable, to take, collect, and receive for their use all the matters and things so assigned.

And for the better securing said Credit Mobilier against being made chargeable on said guarantee by any default of said Hoxie, and against any loss of the matters and things above assigned, said Hoxie hereby appoints said Credit Mobilier his lawful attorney, irrevocable, to name, constitute, employ, and at their pleasure remove all agents and subagents which said Credit Mobilier may deem necessary or proper to conduct, manage, and do the business of constructing the railroad, otherwise performing said contract, and to pay out and apply the moneys so to be advanced to the uses for which the

same are to be advanced, and does hereby pledge and transfer to said Credit Mobilier the said contract and all his rights under the same as collateral security for the performance of said contract on his part, with full power to enforce such pledge on default without notice.

The said Credit Mobilier agrees to save said Hoxie harmless and indemnified against all claims under said contract, and to pay the said Hoxie five thousand dollars in cash and ten thousand dollars in the stock of the Union Pacific Railroad Company, and to carry out the conditions relating to a construction bureau, as shown by specifications hereto annexed.

In witness whereof said Credit Mobilier has executed this memorandum under its seal and signature of its president, and said Hoxie has signed and sealed the same, the day and year first above written, at their agency in the city of New York.

T. C. DURANT, *President.*

H. M. HOXIE.

Witness:

B. F. BUNKER.

CREDIT MOBILIER AND UNION PACIFIC
RAILROAD.

H. M. HOXIE, Esq.:

Dear Sir: You will please go on with the work under the above proposition, and if the company do not accept it before the first day of October next, they will pay you upon the same terms and conditions for what work may be done, as shown by the estimates of the engineers, made as provided in this

proposition, first giving you thirty days' notice that they do not accept.

GEORGE T. M. DAVIS,
Special Committee.

Above contract is approved and ratified.

[SEAL.]

JOHN A. DIX.
C. S. BUSHNELL.
GEORGE T. M. DAVIS.

September 23, 1864.

To the President and Executive Committee of the Union Pacific Railroad Company:

On condition that your railroad company will extend my contract from its present length for one hundred miles, so as to embrace all that portion of the road between Omaha and the one hundredth meridian of longitude, I will subscribe, or cause to be subscribed, for five hundred thousand dollars of the stock of your company.

Respectfully yours,

H. M. HOXIE,
By H. C. CRANE,
Attorney.

The above proposition is hereby accepted for and on behalf of the Union Pacific Railroad Company.

JOHN A. DIX,
C. S. BUSHNELL,
GEO. T. M. DAVIS,
Special Committee.

October 3, 1864.

PACIFIC RAILROAD ACTS OF JULY 2, 1862.

AN ACT to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes.

* * * * *

SEC. 5. *And be it further enacted*, That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles, of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually), which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together, with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities and appurtenances thereunto belonging, and also all lands granted to the said company by the United States which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

AND SECTIONS 10 AND 11 OF THE AMENDED ACT
OF JULY 2, 1864.

SEC. 10. *And be it further enacted*, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mail troops, munitions of war, supplies, and public stores for the Government of the United States. And said section is further amended by striking out the word "forty" and inserting in lieu thereof the word "on each and every section of not less than twenty."

SEC. 11. *And be it further enacted*, That if any of the railroad companies entitled to bonds of the United States, or to issue their first-mortgage bonds herein provided for has, at the time of the approval of this act, issued, or shall thereafter issue, any of its own bonds or securities in such form or manner as in law or equity to entitle the same to priority or preference of payment to the said guaranteed bonds, or said-first-mortgaged bonds, the amount of such corporate bonds, outstanding and unsatisfied, or uncanceled, shall be deducted from the amount of such government and first-mortgaged bonds which the company may be entitled to receive and issue; and such an amount only of such government bonds and such first-mortgaged bonds shall be granted or permitted, as added to such outstanding, unsatisfied, or uncanceled bonds of the company shall make up the whole amount per mile to which the company would otherwise have been entitled: *And provided, further*, That before any bonds shall be so given by the United States, the company claiming them shall present to the Secretary of the Treasury an affidavit of the president and secretary of the company, to be sworn to before the judge of a court of record setting forth whether

said company has issued any such bonds or securities, and if so, particularly describing the same, and such other evidence as the secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the Secretary of the Interior. And any person swearing falsely to any such affidavit, shall be deemed guilty of perjury, and on conviction thereof, shall be punished as aforesaid: *Provided also*, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereunto under the provisions of any act or acts other than this act, and the act amended by this act.

NOTE.—On these three sections 5 of the act of 1862 and sections 10 and 11 of the amended act of 1864, the administration relied for the protection of the Government.

The railroads having been charged with the violation of these three sections, after repeated requests for the compliance, which they refused.

In 1867 the President, for the protection of the Government, issued an order for the Secretary of the Treasury to withhold all the subsidy bonds the companies were entitled to or may be hereafter become entitled, and the Secretary of the Interior was instructed to withhold the issue of any land grant patents until the Pacific Railroads Companies deposit all there first mortgage paramount lien bonds with the Secretary of the Treasury, and the President notified the railroad companies of his action.

ACT OF JULY 25, 1868.

AN ACT relative to filing reports of railroad companies.

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled, That the reports required to be made to the Secretary of the Treasury on or before the first day of July of each year by the corporations created by or entitled to subsidies under the provisions of an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and the acts supplemental to and amendatory thereof, shall hereafter be made to the Secretary of the Interior, on or before the first day of October of each year. Said reports shall furnish full and specific information upon the several points mentioned in the twentieth section of said act of eighteen hundred and sixty-two, and shall be verified as therein prescribed, and on failure to make the same as herein required, the issue of bonds or patents to the company in default shall be suspended until the requirements of this act shall be complied with by such company. And the reports hitherto made to the Secretary of the Treasury under the said act of July first, eighteen hundred and sixty-two, shall be transferred and delivered by him to the Secretary of the Interior to be filed by him.

SEC. 3, *And be it further enacted,* That the reports required from the commissioners appointed to examine and report in relation to the road of any of the corporations whereto reference is made in this act, shall be addressed to and filed in the Department of the Interior; and all such reports heretofore made shall be transferred to and filed in said Department of the Interior; and so much of any and all acts as requires any reports from such companies, or any officers thereof, to be made to the Secretary of the Treasury, is hereby repealed.

SEC. 4. *And be it further enacted,* That, in addition to the eight subjects referred to in section twenty of the act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished annually to the Secretary of the Interior all reports of engineers, superintendents, or other officers who make annual reports to any of said railroad companies.

Approved, June 25, 1868.

*To the Honorable the Judges of the Circuit Court of the
United States within and for the Eighth Judicial Circuit
and District of Nebraska:*

Richard Olney, Attorney General of the United States of America, in behalf of the United States, by leave of said court, presents this his petition in the above-entitled cause, and by way of such petition avers and says:

That under and in pursuance of the provisions of the act of the Congress, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and the acts amendatory thereof, the Secretary of the Treasury was authorized to and did issue subsidy bonds of the United States to the Union Pacific Railroad Company in the total sum of \$27,236,512, and to the Kansas Pacific Railway Company in the total sum of \$6,303,000, together making bonds for the following total sums issued at the following dates, exclusive of interest:

November 1, 1865	\$640,000
January 1, 1886	1,440,000
February 1, 1886	4,320,000
January 1, 1867	6,640,000
*January 1, 1868	17,342,512
*January 1, 1869	3,157,000
<hr/>	
Total.....	\$33,529,512

and to secure the repayment to the United States of the amount of said bonds, with interest thereon, at the rate of 6 per cent per annum from said dates respectively, until the date of their respective maturities, it was provided by the fifth section of said act that the "issue of said bonds and delivery to the company shall, *ipso facto*, constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and descrip-

tion, and in consideration of which said bonds may be issued."

That the said Attorney General for the United States is informed and believes that first mortgage bonds have been issued and are outstanding to which said lien of the United States has been and is, under the authority of said act, approved July 2, 1864, subordinated to the principal sums of \$27,229,000 only upon the line of the Union Pacific Railroad from Omaha to Ogden, and to the principal sums of \$2,240,000 and \$4,063,000, or a total of \$6,303,000 upon the 394 miles of the Kansas Pacific Railway, lying next east of its eastern terminus, and that upon that part of the Kansas Pacific Railway, which is situated between the said 394th mile post and Denver, there is a first mortgage debt which will mature in 1899 to the amount of \$5,887,000 and that the interest on said first mortgage debts has been paid by said companies.

That by the act of Congress approved May 7, 1878, entitled "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes' approved July 1, 1862, and also to alter and amend the act of Congress, approved July 2, 1864, in amendment of the said first named act," it was provided, among other things, that a sinking fund should be created for the further security of the payment and reimbursement of the said subsidy bonds issued by the United States in aid of said railroad companies, by the reservation in the Treasury of the United States of certain sums of money, which sums so covered into the Treasury amounted on June 30, 1893, to a large amount, which had before that time been invested and were then and are now held as follows:

UNION PACIFIC RAILWAY COMPANY SINKING
FUND, JUNE 30, 1893.

United States currency 6s.....	\$188,000.00
Union Pacific R. R. Co. first mortgage 6s.....	5,739,000.00
Kansas Pacific R. R. Co. first mortgage 6s.....	1,276,000.00
Central Branch Union Pacific R. R. Co. first mortgage 6s.....	936,000.00
Central Pacific R. R. Co. first mortgage 6s.....	3,304,000.00
Western Pacific R. R. Co. first mortgage 6s....	335,000.00
Sioux City & Pacific R. R. Co. first mortgage 6s.	712,500.00
<hr/>	
Total securities.....	12,490,500.00
Cash uninvested	9,018.61
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Total fund.....	12,499,518.61

That by the terms of the seventh section of the act last hereinbefore described it was provided that said sinking fund should, at the maturity of the bonds, issued by the United States, "be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon and not reimbursed, subject to the provisions of the next section."

And, by the eighth section of the said act, it was further provided that "said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the

claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order."

And the said Attorney General for the United States of America gives the court here to understand and be informed that the nature and extent of the claims and liens asserted or which may be asserted against and upon the property of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, and since their consolidation aforesaid, against and upon the property of the said Union Pacific Railway Company, and its several branches and leased and connecting lines, and upon the property and securities of the railroad companies, named in the bill of complaint in this cause, are so extensive and complex, existing in so many States and Territories, and governed by such diverse laws, that without an investigation requiring much delay and the protracted labor of legal and other experts, and perhaps without judicial decisions, it will not be possible for the Attorney General to form, and he can not now express an opinion as to the extent and priority of the liens described in the said bill of complaint, or otherwise impressed upon the property of the said railroad companies named as defendants thereto, but he avers the fact and law to be that of the debts accruing to the United States of America, on account of their said advances of subsidy bonds, under the acts aforesaid, the principal sums will mature as follows:

On November 1, 1895.....	\$640,000
On January 1, 1896.....	1,440,000

On February 1, 1896	4,320,000
On January 1, 1897.....	6,640,000
*On January 1, 1898	17,342,512
On January 1, 1899.....	3,157,000
	<hr/>
Total.....	33,539,512

That interest thereon will at said dates be payable at the rate of 180 per cent to the United States, such interest being the sum of \$60,371,121.60, making the total sum, of principal and interest, the sum of \$93,910,633.60, less the sums which may be credited thereon by reason of said payments or credits made under said sixth section of the act of July 1, 1862, or otherwise, and less whatever amount may be realized for and out of the said sinking fund, as it may exist and be constituted at the time of the respective maturities of said debts, and that said debts and interest, less said credits and sinking fund now amount at the present value of said sinking fund, to more than \$55,000,000 and are secured by the first lien upon all the property, real, personal, and mixed, choses in action, assets, income, and franchises of the said Union Pacific Railway Company, subject to the said prior mortgage liens heretofore described, amounting to \$27,229,000, \$6,303,000, and \$5,887,000, and subject also to any paramount lawful prior right, title or lien upon any property of said company which may have been created before and existed at the time of the acquisition of any such property, by said Union Pacific Railroad Company, said Kansas Pacific Railway Company, said Denver Pacific Railway and Telegraph Company, or said Union Pacific Railway Company, and subject further to any use or disposition which may have been made by said Union Pacific Railway Company of any of its property or assets in

the ordinary proper and lawful course of its current business in good faith and for valuable consideration.

JOINT RESOLUTION OF APRIL 10, 1869.

JOINT RESOLUTION for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad Company and for other purposes.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the stockholders of the Union Pacific Railroad Company, at a meeting to be held on the twenty-second day of April, eighteen hundred and sixty-nine, at the city of Boston (with power to adjourn from day to day) shall elect a board of directors for the ensuing year; and said stockholders are hereby authorized to establish their general office at such place in the United States as they may select at said meeting: Provided, That the passage of this resolution shall not confer any other right upon said Union Pacific Railroad Company than to hold such election, or be held in any manner to relinquish or waive any rights of the United States to take advantage of any act or neglect of said Union Pacific Railroad Company heretofore done or omitted whereby the rights of the General Government have been or may be prejudiced: And provided, further, That the common terminus of the Union Pacific and the Central Pacific Railroads shall be at or near Ogden; and the Union Pacific Railroad Company shall build, and the Central Pacific Railroad Company pay for and own the railroad from the terminus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line.

SEC. 2. *And be it further resolved, That, to ascertain the condition of the Union Pacific Railroad and the Central Pacific Railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads, for the entire length thereof, to the said terminus as a first-class railroad in compliance with the several acts relating to said roads; and the expense of such board, including an allowance of ten dollars to*

each for their services for each day employed in such examination or report, to be paid equally by said companies.

SEC. 3. *And be it further resolved*, That the President is hereby authorized and required to withhold from each of said companies an amount of subsidy bonds authorized to be issued by the United States under said acts sufficient to secure the full completion as a first-class road of all sections of such road upon which bonds have already been issued, or in lieu of such bonds he may receive as such security an equal amount of the first-mortgage bonds of such company; and if it shall appear to the President that the amount of subsidy bonds yet to be issued to either of said companies is insufficient to insure the full completion of such road, he may make requisition upon such company for a sufficient amount of bonds already issued to said company, or in his discretion of their first-mortgage bonds, to secure the full completion of the same. And in default of obtaining such security as (is) in this section provided, the President may authorize and direct the Attorney General to institute such suits and proceedings on behalf and in the name of the United States, in any court of the United States having jurisdiction, as shall be necessary or proper to compel the giving of such security and thereby, or in any manner otherwise, to protect the interests of the United States in said road, and to insure the full completion thereof as a first-class road, as required by law and the statutes in that case made.

SEC. 4. *And be it further resolved*, That the attorney General of the United States be, and he is hereby, authorized and directed to investigate whether or not the charter and all the franchises of the Union Pacific Railroad Company and of the Central Pacific Railroad Company have not been forfeited, and to institute all necessary and proper legal proceedings; also to investigate whether or not said companies have or have not made any illegal dividends upon their stock, and if so, to institute the necessary proceedings to have the same reimbursed; and also to investigate whether any of the directors or any other agents or employees have or not violated any penal law, and if so to institute the proper criminal proceedings against all persons who have violated such laws.

Approved, April 10, 1869.

Treasury Department, Feb. 21, 1879.

Hon. Samuel J. Randall, Speaker, House of Representatives.

Sir: The third section of the Act of Congress, approved

May 7, 1878, entitled "An act to alter and amend the Act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and also to alter and amend the Act of Congress approved July 2, 1864, in amendment of said first-named Act," provides "That there shall be established in the Treasury of the United States a sinking fund, which shall be invested by the Secretary of the Treasury in bonds of the United States, and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate, and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States."

The only investment yet made under the provisions of this Act has been made in the five per centum bonds of 1881, as follows: On account of sinking fund, Union Pacific Railroad Company, principal, \$59,500, and premium \$3,049.37; and on account of sinking fund, Central Pacific Railway Company, principal \$36,700, and premium \$1,880.88.

It is very probable that this loan will be called in and funded into four per cent bonds within one year after it is due. If, therefore, this loan is redeemed by May 1, 1882, this investment would only realize to the fund 3 and 32/100 per cent per annum.

The advantage to the fund of investments in four per cent bonds at par is apparent, unless the market price of the four and one-half per cent bonds falls below 105.03; the five per cent bonds below 103.02, and currency sixes below 126.44. I

have therefore to inform Congress, in accordance with the requirements of the statute, that investments will hereafter be made in four or four and one-half per cent bonds or currency sixes, as may be most advantageous to the fund, having regard to the length of time the investment is to continue.

As the interests of the United States and the railroad companies in this fund are reciprocal, I would recommend that the law be so modified as to authorize the Secretary of the Treasury, at his discretion, to invest such amounts as may be from time to time payable to this fund in the first mortgage bonds of the respective roads, as authorized by the tenth section of the Act of July 2, 1864 (13 Statutes, 358).

This will give the roads a better rate of interest on the fund without detriment to the United States.

The United States as a deferred creditor, is interested to the extent of the preferred bonds.

The ninth section of the Act of May 7, 1878, provides that all sums required to be paid into the sinking fund under this act, or under the acts hereinbefore referred to, are made a lien upon all the property and franchises of the roads, "subject to any lawfully prior and paramount mortgage, lien, or claim thereon." As these bonds are a prior lien on this fund, better investment for the fund itself can not be obtained, so long as they can be purchased below the market rate of the currency sixes.

Very respectfully,

JOHN SHERMAN,
Secretary.

Treasury Department, June 14, 1880.

Hon. Samuel J. Randall, Speaker, House of Representatives.

Sir: Section 3 of the Act of May 7, 1878 (20 Stat., 58), es-

tablishes in the Treasury of the United States a sinking fund for the Union Pacific and Central Pacific Railroad Companies which shall be invested by the Secretary of the Treasury in bonds of the United States, and requires such investments to be made in the five per centum bonds of the United States, unless for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States.

On Feb. 21, 1879, and again on December 8, 1879, the Secretary recommended that the law be so modified as to allow the Secretary of the Treasury, at his discretion, to invest such amounts as may be from time to time payable to the fund, in any bonds of the United States, or in the first mortgage bonds of the roads interested, preference being given to the latter for the reason that they constitute a prior lien upon all the property and franchises of the roads, and the United States, as a deferred creditor, being interested to the extent of such bonds.

Investment in the four, four and one-half, and six per centum bonds of the United States will yield interest on the principal so invested as follows:

Denomination			Period to payment	Rate of interest realized
Funded loan of 1907, registered and coupon.....			27.14 years	3.62
" " " 1891, registered			11.32 "	3.70
" " " 1891, coupon			11.32 "	3.52
Currency sixes, registered.....			14.61 "	3.85
" " "			15.50 "	3.93
" " "			15.65 "	3.95
" " "			15.73 "	3.95
" " "			16.65 "	4.02
" " "			17.65 "	4.09
" " "			18.65 "	4.15

The advantage to the fund of investments in other bonds than those preferred by the law must therefore be apparent and for this reason I have to inform Congress, in conformity with the requirements of the statute, that investments for said

sinking fund will hereafter be made in such bonds of the United States as may be most advantageous to the fund, having a due regard to the length of time such investments are to continue.

Very respectfully,

JOHN SHERMAN,
Secretary.

CHAPTER 4

BEFORE THE SENATE COMMITTEE ON THE PACIFIC RAILROAD DEBT.

Washington, D. C., Thursday, March 19, 1896.

The Committee met at 2.30 P. M.

Present: Senators Gear (Chairman), Stewart, and Brice.
54th Congress, Document
1st Session. SENATE. No. 314.

GOVERNMENT DEBT OF THE PACIFIC RAILROADS. NOTES OF HEARINGS

BEFORE THE COMMITTEE ON PACIFIC RAILROADS ON THE SUBJECT OF THE INDEBTEDNESS OF THE PA- CIFIC RAILROADS TO THE GOVERNMENT.

In the Senate of the United States, June 9, 1896.

Resolved, That the hearings had before the Select Committee on the Pacific Railroads, not heretofore printed as documents, be printed for the use of the Senate.

Attest:

WM. R. COX,
Secretary.

STATEMENT OF LEONARD C. BLAISDELL.

Leonard C. Blaisdell, of Indianapolis, Ind., counselor at law, sworn and examined:

The Chairman. You may proceed and make your statement.

Mr. Blaisdell. The statement which I have to make under oath respecting the subject-matter of claims represented by myself as attorney in fact of claimants against the United States, will be found expressed in case 18003 in the Court of

Claims. It is therein set forth that by virtue of the action of the Secretary of the Treasury and of the First Comptroller of the Treasury on April 22, 1884, the rights, privileges, and franchises of these creditors of the Union Pacific, the Central Pacific, and other Pacific Railroad Companies (to which were granted loans by the United States in aid of the construction of these roads and telegraph lines to the amount of \$64,623,512), were made subject to the rights of the lawful and just holders of the lien prior and paramount to that of the United States, as expressed in the eighth section of the act of 1864, and as further expressed in the eighth section of what is commonly named the Thurman Act.

That on the said date, a contract or agreement was entered into with myself, by which the United States undertook to issue call bonds on the said Pacific Railroad Companies, payable January 1, 1885, at the sub-treasury in the city of New York. It was further agreed that the amount of interest on the accrued indebtedness, so described as of lien paramount to that of the United States, should be converted into United States sinking fund bonds, bearing the rate of 5 per cent interest, to date from March 3, 1883, and made payable by the United States on August 16, 1894. I further state that the complete statement in relation to all the particulars of this transaction has been heretofore made repeatedly, and finally under the determination of the late President Harrison, and will be found in pamphlet form with the Executive, and also copies with the Secretary of the Treasury, with the Secretary of the Interior Department, and in the Department of Justice. Certified copies under oath will be found in all the Departments.

The Chairman. Have you a copy of that document?

Mr. Blaisdell. Yes; I will furnish full printed copies.

Senator Stewart. I would like to know what this controversy is about.

Mr. Blaisdell. I did not expect to present the matter in full at this time. I expected to get an appointment to do so. We would have to go to our rooms and bring our papers.

Senator Brice. This is a very important matter, and you should have your documents and an opportunity to present them.

Mr. Blaisdell. I did not expect to be rushed into this subject at all.

Senator Brice. The witness ought to lay before the committee his propositions in proper order.

Senator Stewart. Yes; and submit a statement in writing.

Mr. Blaisdell. I will do that.

Adjourned until Saturday, March 21, at 11 a. m.

Washington, D. C., Saturday, March 21, 1896.

The committee met at 11 a. m. Present, the chairman.

INTEREST ON FIRST MORTGAGE BONDS.

STATEMENT OF MR. LEONARD C. BLAISDELL,—
Continued.

Leonard C. Blaisdell appeared before the committee, and submitted the following statement:

My own personal relation to this matter of Pacific Railroad bonds began about the year 1882. During that year and the succeeding one of 1883 there was a considerable amount of correspondence between myself and the Department of the Treasury. The principal part of such correspondence was between myself on the one part and the late Secretary of the Treasury, the Hon. Charles J. Folger, and the late First Comptroller of the Treasury, the Hon. William Lawrence.

The subject of that correspondence was confined strictly to a single question proposed by me, to wit: "What bonds of indemnity to the United States were signed by Charles Durkee, the late governor of the Territory of Utah, during his lifetime, and which bonds had been canceled?"

The greater part of this correspondence occurred during the year 1882. During its pendency, however, while there was no satisfactory answer to my question, there was manifested on the part of the officials with whom I corresponded a desire to encourage my further inquiries.

At this juncture, or the beginning of the year 1883, it was officially communicated to me "that one of the two or more bonds of indemnity, signed by Charles Durkee, was in behalf of Franklin H. Head and pertained to Indian agency; that such bonds had been duly canceled." This not being satisfactory (to me) I made further inquiry into what connection, if any, Mr. Durkee appeared to have with either the construction or security for construction of any part of the Pacific Railroad lines.

The reason I had for pressing my inquiries further was that my investigation before this time had fully satisfied me that, no matter in what form consisted the bulk of the estate of Charles Durkee, it had been sequestered from its lawful heirs. I had informed the Department that the probate records of Kenosha County, Wis., disclosed the fact that a "bargain or assignment" of matters of estate not mentioned in inventory had been made between Caroline Durkee (the widow of Charles Durkee) and one Harry Durkee (an executor of the estate), and that such procedure had been in fraud of the rights of next of kin, claimants as heirs at law, under the ordinance of 1787.

I am satisfied that it was this information alone, unsus-

ported by anything that I personally knew about the assets of said estate, that caused me to receive soon afterwards instructions in official manner, from both the Secretary of the Treasury and the First Comptroller, what course I should pursue, and to report to the Department when I should have complied with instructions and completed the arrangements I was directed to make.

The directions were to commence a suit in equity procedure in a United States court having jurisdiction over the person of one of the executors of the will of the late Charles Durkee, and that when such suit should have been instituted to report forthwith to the head of the Treasury Department for further advices.

Therefore, having complied literally with these instructions and filed the suit in the supreme court of Cook County, in Chicago, on the 15th day of April, 1884, on the 22d day of that month and year I was presented by the Hon. Joseph Cannon to the Treasury clerk, Amos Webster. Mr. Cannon requested Mr. Webster to look over the papers I had to present him, and, further, to immediately call together such officials as the papers seemed to require to make the required investigations, which all related to Pacific railroad bonds and Charles Durkee's obligations to the United States on bonds of indemnity.

Within a short time there came into the Treasury building Judge Lawrence, First Comptroller; Judge Folger, Secretary of the Treasury; Judge Brewster, Attorney General; Secretary of State Frelinghuysen, and several other officers, each bearing in hand a large bundle of papers. Mr. Webster presented me, and with little delay I, with all these officials, was ushered into a room I understood to be the office of Judge Lawrence, and he further continued the introduction by mak-

ing the statement that I was the person who had been making all the inquiries of the Department respecting the relations, if any, that the estate of Charles Durkee bore to the affairs and business of such Department.

Immediately Judge Lawrence began to interrogate me as to what knowledge I had acquired relative to the subject matter of the proposed investigation. After ascertaining that I knew practically nothing of Charles Durkee's ownership on Pacific railroad or other bonds (at that time), he proceeded to examine the power of attorney, court papers, and official letters which I had brought with me; and at the conclusion of his examinations he addressed Judge Folger in a formal way, declaring that the powers of attorney presented under the provisions of the ordinance of 1787 constituted me the legal representative of the late governor of the Territory of Utah, and that any business he might have with such estate could be legally transacted with myself. Then Judge Folger arose and stated what the business was that he desired to transact and the purposes to be effected, if found practical, in the joint meeting of officials present and myself.

Judge Folger, then directing his conversation to the Attorney General, Judge Brewster, rapidly recited the enactments of 1862, 1864, and of 1878, respecting Pacific railroads, and concluded by stating that there had been in all some forty or more suits between the Government and these corporations over the question of what constituted "net earnings" and the resultant rights or privileges of the Government to collect moneys from the said corporations for the purposes named in the last enactment mentioned, or the Thurman Act.

At about this stage of the proceedings Judge Folger turned his attention to the vast number of papers, files, and records of various kinds that lay on the tables, picking up different Brewster.

"These," he said, pointing to the first collection, "are the first-mortgage bonds issued by the Union, the Central, and other Pacific railroad corporations, as under the provisions of the act of 1864." Next, he said, "We have here a large amount of bonds, issued by the same corporations, which have been issued to secure payment of interest accrued on the principal bonds. These first-mortgage bonds differ from all others in that they are guaranteed by act of Congress, as lawfully paramount to the right and interests of the United States in respect of its mortgage against the same corporations and each and every one," said he (holding some of them up in his hands, so as to be seen by all present), "are assigned to one, sole, assignee—Charles Durkee."

Then, exhibiting some of the interest bonds, Judge Folger explained that these, as well as the first-mortgage bonds, were issued in the form of call bonds, by the terms of which, on any default being made in the payment of the same on the demand of the legal holder or his legal representatives, the right of foreclosure immediately vested in the holder. "Therefore," said he, "I have contended against the practice heretofore adopted, of treating these bonds as payments of interest, however good they may be as securities, and have conones in his hand as he continued his remarks to Judge tended that they do not, within the meaning of the law, constitute payment of the interest. To you, Judge Brewster, I present the question for your decision." Judge Brewster promptly replied: "Judge, I fully concur in your conclusion. That is my judgment also." Then, Judge Folger immediately turned himself about, and, facing me, said: "You have just heard the decision of Judge Brewster, the Attorney General. What do you want done with these bonds?"

I answered: "I should prefer to leave the whole matter to your discretion, Judge Folger. I can not determine what disposition shall be made of these bonds; that is for you to say."

"Let me put the question this way: Do you want these mortgages foreclosed?"

Mr. Blaisdell: "That depends upon how much money can be realized out of them without foreclosure."

Judge Folger: "I think that the amount of the Central's bonds, with the interest accrued, might be collected by giving plenty of time."

Mr. Blaisdell: "What is the amount of the Central's bonds?"

Judge Folger: "\$25,885,120."

Mr. Blaisdell: "You think that amount could be realized on a call, do you?"

Judge Folger: "Yes, sir."

Mr. Blaisdell: "Let it be called then."

Judge Folger: "At what date?"

Mr. Blaisdell: "At the end of the fiscal year."

Addressing then the accounting officers, Secretary Folger said:

"Make an estimate of the value of these bonds with the interest to accrue to date."

It was made, but while being made other conversation was going on between the Secretary and myself, he giving me information and instructions to guide me.

Receiving the paper from the accounting officers, on which the estimate had been made, he remarked with apparent surprise: "Why, that amounts to almost as much as the sum total of all the original bonds. I fear that if so much is called at one time there will be a failure. Could you not extend the time on part of the payments?"

"Certainly," I said, "I am not so anxious to get it all at

once as I am to at once get good security for the whole. Take as much time as you desire to make the calls in, provided only that we hold the United States securities for our money instead of Pacific railroad bonds."

Judge Folger: "How would the 1st of January next (1885) do?"

"That will do," I said, "I was only solicitous to get the job off my hands and into yours, and the only care that I have is to see that the security shall pass from the Pacific railroads to the United States, so that I shall look to the Government, and not to the Pacific railroads for the payment."

The accounting officers, at this stage of proceedings, picked up their pencils and made a new computation of interest to January 1, 1885.

Judge Folger: "But you must remember that there is a great deal more of this indebtedness to be looked after. What are you going to do with the balance of it; that of the other roads?"

Mr. Blaisdell: "Well, we want to collect it."

Judge Folger: "Should there be an attempt to collect the whole amount due, as under the terms of the forfeiture, the property of these corporations would fail to make anything near the amount required, and the Government would get absolutely nothing. I would like to arrange to save something for the Government."

Mr. Blaisdell: "How will this do. Secure to us the entire principal of the mortgages, and you take just as long time for the Government to pay the accrued interest as you desire?"

Judge Folger. "I will fix the date of the maturity of the accrued interest at that of the maturity of the last bond, or August 16, 1894. At what date shall we begin to compute the interest on the Pacific railroad interest bonds?"

Mr. Blaisdell: "I notice you said that the last payment of interest had been made March 3, 1883. Fix it at that date."

Judge Folger: "Very well. Now, what rate of interest shall this fund bear?"

Mr. Blaisdell: "What rate of interest do sinking fund bonds now bear?"

Judge Folger: "Five per cent per annum."

Mr. Blaisdell: "Will you make it 5 per cent?"

Judge Folger: "I think we can."

"Do that, then," said I.

Judge Folger: "Now, what depository do you propose to receive the principal in?"

Mr. Blaisdell: "New York City subtreasury."

Judge Folger: "Why New York City; why not Washington?"

Mr. Blaisdell: "I think it less likely to get mixed up with other funds."

Judge Folger: "Very well, then, that will do. Now, is there any more interest to be paid by the corporations?"

Mr. Blaisdell: "No, sir. From these dates they will all be excused from the payment of any more interest."

Judge Folger: "But I would like in some way to secure to the Government some more net earnings."

Mr. Blaisdell: "Well, I do not know that I have anything to do with that."

Judge Folger: "Not directly; but indirectly it would aid the Government, if you can make a demand upon the Union Pacific for the whole of its net earnings—as a matter of default—for payment of interest."

Mr. Blaisdell: "Very well; you can fix that to suit the case."

Judge Folger: "On what date did you receive the last interest?"

Judge Folger: "March 3, 1883."

Mr. Blaisdell: "Let it cease on that date, then."

To this proposition Mr. Folger agreed.

This closed the transactions and the conversation with me, excepting that, when he was about to retire, I asked him what I should have to show that these transactions had occurred. Addressing Judge Lawrence, he said: "You, Judge, will see to it that Mr. Blaisdell is supplied with the proper certificate of ownership of these bonds, and a copy of the proceedings and transactions between himself and the Government, omitting nothing essential to the protection of the interests which he represents."

Mr. Blaisdell (to Judge Lawrence): "When shall I receive these papers and certificates?"

Judge Lawrence: "Oh, you return for them in about a month. I think we will have everything ready about that time."

In about five or six weeks I returned to Washington again, and, being accompanied by Hon. J. G. Cannon, made a personal application for the papers promised. Judge Lawrence manifested a degree of indifference and ignorance on the subject which called forth from Mr. Cannon this remark: "Why, Judge Lawrence, were you not present and knowing to all that transpired in the interview with Mr. Blaisdell?"

Judge Lawrence replied: "Certainly, I was; but, you know, Mr. Cannon, the business was of such a nature that it was not proper to make it a subject of open conversation, and you see this room was filled with promiscuous people. Let Mr. Blaisdell come in this afternoon, and we will have a private talk, and I will tell him all about it."

Then, beckoning with his hand to Joseph A. D. Thompson, Deputy First Comptroller, he said: "Go with these gentlemen

and introduce Mr. Blaisdell to Mr. William Armstrong, the Commissioner of Railroads, and tell that officer that hereafter it will be his duty to report Pacific Railroad matters and accounts to Mr. Blaisdell." Mr. Lawrence added, as instructions to Mr. Armstrong, "that he should take particular pains to instruct Mr. Blaisdell as to his rights and prerogatives."

Mr. Armstrong turned to those pages in the last railroad report which referred more especially to the rights and privileges of holders of liens prior and paramount to that of the United States and recited to me the text important to my protection. Afterwards, handing me the report, he said: "You are entitled to this report, take it along."

From that time to the present, all Commissioners of Railroads have continued to furnish me with railroad reports as they have been published, and have uniformly forwarded them to my address, whether at Champaign, or Chicago, Ill.

Although satisfied personally with the treatment received from Mr. Armstrong, I felt disappointed, and returned again to Judge Lawrence, and expressed to him my great dissatisfaction and disappointment in not discovering anything in the reports that identified the late Governor Durkee, of Utah, with any of the matters in which, by reason of the transactions of April 2, 1884, I had become concerned in as legal representative for lawful creditors.

I insisted that Judge Lawrence should so far comply with the known order of Judge Folger (who then had retired on account of sickness) as to deliver to me certificates, or other form of written evidence, that I was the legal representative of the creditors of the Government in these matters. He then promised me that as soon as the terms and agreements made with respect to Pacific railroads in the matter should have been fully carried into effect, and accountings fully com

pleted, that he would supply me with certified copies of every transaction that had occurred in the matter with me.

Accepting this promise as having been made in good faith, I then returned to my home in Champaign, Ill. The time from the second to the third visit to Washington was about six or seven months. During this time a number of letters passed between myself and the Treasury Department. Generally my letters were answered in person by Judge Lawrence. The answers were generally brief, and uniformly evasive on every question of vouchers and certificates.

I came the third time in January, 1885; waited on Senator Cullom, who wrote a letter of introduction to the Assistant Secretary of the Treasury, Jonathan Tarbell, requesting such officer to give me special attention for the time I had to spend with him. This he did, and we spent the entire day in the examination of large bundles of papers brought to us by clerks, with the view of selecting the most important, and of finding, if practicable, "how and when Pacific Railroad bonds were assigned to Charles Durkee, deceased, and the papers showing the rights of his heirs."

The result was disappointing to Mr. Tarbell, as well as myself, and he proposed to continue the examination the next day. Owing, however, to my engagements in the suit that had been placed under my management, by an arrangement with the Secretary of the Treasury, that was still pending in Chicago, I felt compelled to return and trust the further investigation to Mr. Tarbell, who promised to do for me the best he could. I returned that night to Chicago.

The Secretary of State, Mr. Frelinghuysen, however, having a personal knowledge of the proceedings of the Secretary of the Treasury, April 22, 1884 (having been present), voluntarily prepared some State papers to be used in the case, to

which he attached the great seal of State, and affixed his signature, saying that the purpose of so doing was to enable me to save all the testimony I had received, and to attach thereunto all that I should thereafter receive, in testimony of the transactions had with myself.

It was mutually agreed between myself, Secretary Frelinghuysen, and Secretary Tarbell that search for the documents should continue after I should leave, and that as fast as discovered they should be forwarded to me.

There were a few more documents sent me after this, but I never received the certificate of ownership of the bonds.

Mr. Blaisdell dictated to the stenographer the following additional particulars:

THE ENTIRE INDEBTEDNESS EXPRESSED IN UNITED STATES STATUTES.

First. The first-mortgage indebtedness and the subsidy indebtedness being paid, there exists no further liability against the United States.

Second. The United States statutes have provided and the Supreme Court has decided that there is but one class of creditors with higher claim than that of the United States. (See section 8 of the Thurman Act, and sections 4 and 5 of the act of March 3, 1887.)

Third. No records of the Government show any other claim purporting to be a paramount lien to that of the United States except the claim represented by L. C. Blaisdell.

Fourth. The act of March 3, 1887, is a complete statutory preparation and provision directing the Secretary of the Treasury to clear off such paramount lien.

If the parties claiming to hold paramount lien bonds are correct in their statements, how can the last report of the Secretary of the Interior be correct?

The Secretary of the Interior says that all these bonds are now matured; that the Government holds the second lien and must protect the property against the first lien. And the statutes declare that the United States has but one lien security—the first lien.

See act of May 7, 1878, preamble, pages 318 and 319, section 3743 of the Revised Statutes:

All contracts to be made by virtue of any law and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited in the offices of the First Comptroller of the Treasury of the United States, the Second Comptroller of the Treasury of the United States, or the Commissioner of Customs, respectively, according to the nature thereof, within ninety days after their respective dates.

Section 306, Revised Statutes of the United States, on liabilities outstanding three years or more, provides:

That such sums as shall stand to the credit of any disbursing officer for any purpose, in liquidation of an indebtedness due to the United States which have for three years or more remained outstanding, unsatisfied, and unpaid shall be deposited by the Treasurer to be covered into the Treasury by warrant, and to be credited to the credit of the parties in whose favor such certificates, drafts, or checks, were respectively issued, or to the person who are entitled to receive pay therefor, and into an appropriation account, to be denominated "outstanding liabilities."

Secretary Foster, in a statement made to one of the Congressional committees, said that it has been the practice of the

Treasury Department to treat the interest accrued on the paramount lien obligations of the said Pacific railroad corporations as not maturing until the maturity of the last one of the bonds. A reference to the reply made by the Senate Judiciary Committee, which examined Mr. Foster, will show, as I have been informed, that the committee held to the opposite view and stated that the obligation of the Government in relation to payment of interest accrued on such paramount lien should date from the time when the Government assumed the direct responsibility of payment of the bonds of such lien, to be determined by the date of such assumption.

By reference to the act of March 3, 1887, we shall see that in that act the Secretary of the Treasury is directed to satisfy the claims of the lawful creditors of the paramount lien, as expressed in the act of May 7, 1878. This is the construction which the claimants place on these statutes as applied to their rights. The legal representative of the claimants begs leave to state that, had this been done, as directed in such act, it would have been a saving to the Government of all the interest which has accrued in the period of nine years that has passed since the enactment of that law. And, furthermore, that it would have been to the advantage of the Government, in this respect, that it would have become subrogated to the rights of the paramount lien, by which all the property of the branch lines—worth much more than the main lines—would have become the security for the payment of the Government interest. This, in the aggregate, would amount to a saving of more than \$100,000,000.

The Chairman. Is there anything else that you desire to add to your statement?

Mr. Blaisdell. I have nothing more to offer at present. Our

plan is to submit the statute quotations, when we can be questioned by members of your committee. I do not care to offer anything more until the committee begins its interrogations.

The Chairman. Have you citations from the statutes?

Mr. Blaisdell. In abundance. Anything that you want to ask. We have them already printed, and will put them in the record, if the chairman permits us to do so.

The Chairman. You may hand them to the stenographer and have them printed in the proceedings of the committee.

The following papers were handed in by Mr. Blaisdell, and were ordered to be printed:

Case 18003. In Court of Claims. L. C. Blaisdell v. The United States. Application for rule on the Secretary of the Treasury to show cause why judgment should not be entered against the United States, and in favor of the Petitioners and Claimants v. The United States.

(Final statement of Case 18003. In Court of Claims. L. C. Blaisdell v. The United States.)

This case was brought before the honorable court through the intervention of the Committee on Claims of the Fifty-fourth Congress, from whose files it will appear that the plaintiff had been duly presented by a Member of that Congress, the Hon. Wm. M. Springer of the State of Illinois.

It was filed in the first instance by the present claimant, L. C. Blaisdell, in behalf of not only the heirs at law of the decedent, Charles Durkee, but in behalf of all creditors of the lien prior and paramount to that of the United States, as designated in the several acts of Congress, 1864-1878, and of the act of March 3, 1887.

Thus it appears on the face of the petition that it was a

claim filed and founded upon acts of Congress, which acts were in the petition definitely and at length set forth in form and substance, and made exhibits for the purposes of conveying to the mind of the court the foundation upon which all rights claimed by the complainants in the case were to be ascertained. The rights of the complainants, whatever they shall be ascertained by the honorable court to be or to have heretofore been, are fully defined in the Pacific railroad laws set up, designated, and pleaded in the preliminary and informal petition; in the more complete petition following on the case or matter of the petition being by the court taken for consideration as in *ex parte*; and must finally appear, not necessarily from any or all of the answers of the several Departments, bureaus, and officers of the Government, the information thereby conveyed to the court, but through the information conveyed to the mind of the court through statutes of the United States, and specific acts of Congress defining the particular rights and character of rights set up and appearing in this petition.

It will only be necessary to merely call the attention of this honorable court to the acts of Congress that have been duly presented to it as the authority for bringing this claim herein presented—that can be required of the complainants in the case to present.

The information that has been filed with this honorable court by the attorney of record in the case—and that particular portion of it which classifies as “official matter” certified by the several Departments, Bureaus, and officers of the Government—disclose a state of facts which precludes the possibility of there being hereafter, at this time, by or through any Department, Bureau, or officer of the Government, a state of facts, to it presented that shall run counter to or in any

material form modify the conclusions which the court may draw from that which has been already thus presented.

A summary of these facts thus presented, and that have been on file with this honorable court for the greater part of the two years last preceding the present date, shows to the honorable court all the essential information necessary that it shall have obtained before proceeding to enter final judgment in the cause of the complainants versus the United States.

As they embrace a large part of the history of the Pacific railroad system, their operations, duties, and obligations were as expressed in the United States Statutes; and so great a portion of the detailed information is to be conveyed to the court through official reports of the Auditor of Railroad Accounts, in the first instance (and Railroad Commissioner's reports in the latter instance) it is deemed in order to present first the annual report of the Auditor of Railroad Accounts to the Secretary of the Interior for the year ending June 30, 1878.

On page 6 of this report occur the words:

"The act of Congress approved May 7, 1878 (chap. 96, p. 56, 20 Stat. L., 1877-78), entitled 'An act to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, * * * approved 1862," * * * and "to alter and amend act of 1864," in amendment of said first-named act, requires:

"That the net earnings mentioned in said act of 1862, of said railroad companies, respectively, the Central Pacific Railroad Company of California and the Union Pacific Railroad Company, shall be ascertained by deducting from the gross amount of their earnings, respectively, the necessary expenses paid within the year in operating the same and keeping the

same in a state of repair, and also the sum paid by them, respectively, within the year in discharge of interest on their first-mortgage bonds."

On the first proposition, to wit, the amount paid by these companies "within any given year in operating their railroad and telegraph lines and in keeping the same in a state of repair," it is not proposed to make any remarks. But the second proposition, namely, "with the amount paid by them, respectively, within the year or at any other time, in discharge of interest on their first-mortgage bonds," with this proposition we do propose to deal.

It is made the basis of the rights set up by the complainants against the United States that the interest accrued upon these first-mortgage bonds, to wit:

Union Pacific	\$27,236,512
Central Pacific	25,885,120
Denver Pacific, Railroad and Telegraph Company (Western Pacific)	1,970,560
Kansas Pacific	1,600,000
Central Branch Union Pacific Railroad Company.	1,600,000
Sioux City and Pacific Railroad Company.....	1,628,320

A total first-mortgage debt and indebtedness lien prior and paramount to that of the United States of \$64,623,512, with interest accrued thereon at the rate of 6 per cent per annum, was until the dates, respectively, March, A. D. 1883, and January 1, A. D. 1885, the debt and the expressed indebtedness of these railroad and telegraph companies, jointly and severally, to such parties and persons as were expressed and designated in "certain files and records of the Treasury Department" and which were referred to in these terms by Hon. William Law-

rence, under the date of December 3, A. D. 1884, and at such date became, by contract, an indebtedness of the United States.

That the names of "the lawful and just holders of" the said "lien prior and paramount to that of the United States" have not appeared of record within the knowledge of this honorable court, and have never yet been produced (so far as known) before any committee of either House of Congress nor reported in any railroad report required by law to have contained them, constitutes no evidence and no rebuttal of the testimony that first-mortgage creditors answering to that description do not exist, for we can not consistently believe that when such mortgages of such description and of such character of lien have been so well provided with protection in the expressed provisions of the acts of Congress—1864, 1878, and 1887—that the very "liens" or incumbrances thus openly recognized by such acts of Congress could exist independently of an expressed ownership of such character of mortgages in the Department of the Treasury and the Department of the Interior, both of which said Departments contain the most conclusive evidence and recorded proofs that such bonds do exist.

The Departments just named above have, it is true, failed to produce the "evidence" called for by the complainants in the first instance and by the honorable court in the second instance, that such mortgage bonds do exist; but these acts of Congress just referred to, more especially the preamble to the act of May 7, 1878, declare that the Union Pacific Railroad Company named in this and the other said acts of Congress, and the Central Pacific Railroad Company and others therein named, "did and have issued" an amount of "their own bonds" equal

to the amount so issued (as therein expressed) to them, and each of them, by the United States.

Furthermore, rights of owners of bonds thus issued are not, in law or equity, to be defeated by the neglect and refusal of said several Departments, or any officer, bureaus, or heads of such Departments to make and preserve proper "files and records" of the various transactions that may have occurred in either one.

In pleading for the protection of the rights of this class of creditors of the United States, I shall submit for the consideration of the honorable court the general proposition that rights thus guaranteed by acts of Congress are not to be defeated by "the neglect and refusal of officers of the Government (more particularly the heads of the two Departments last named) to keep, preserve for the use of this court, and to present the true and perfect record of such transactions occurring therein as have involved the credit of the United States to the total amount named in the said Pacific Railroad bonds."

The truth of this last proposition, I believe, (is not questioned by any head of any Department of the Government, so far as I have yet been informed, to wit, the records of the Treasury Department do disclose the "public debt statement; that all interest accrued upon the said bonds are payable by the United States." To whom payable is not disclosed. That the principal of the bonds (\$64,623,512) is also "payable by the United States." To whom payable is not disclosed.

Nor is it disclosed (by record or information to Congress given) when, in the history of these bonds, that portion of them became due and payable which represented "interest indebtedness accrued for the period of time which intervened between issue of the principal bonds and the date of April 22,

1884." The Plaintiff in the case has alleged the fact of the transposition of a specific and well-defined and expressed indebtedness of these corporations into an indebtedness of the United States. The Treasury Department corroborates the fact stated, that such indebtedness has become the indebtedness of the United States, but does not show when it so became (debt payable by the United States).

The Interior (Railroad Department thereof) carries the same debt account under the title or name of "Bond indebtedness," and charges the same item against the United States as such, which the Treasury Department terms a cash and "sinking fund indebtedness." The information is thus disclosed to the honorable court that there is a vast discrepancy between the "public debt statement" of the Secretary of the Treasury and that disclosed in the Department of the Interior. The sinking fund as shown by the Commissioner of Railroads, does not show to exceed \$27,000,000 (less than \$20,000,000 in 1884), while the Treasury Department (unless the Pacific Railroad Committee under Mr. Outwaithe have misstated) shows \$64,000,000 of "sinking fund indebtedness of the Government," by reason of these Pacific Railroad obligations, in addition to that shown in the Department of the Interior.

To prove that there is a gigantic discrepancy and erroneous statement of the public liabilities in this respect, as between these two departments the honorable court has but to summons Mr. Outhwaihe as witness, whom, with thirteen other members of that committee (in 1888), declared "that the amount of \$64,623,512 in cash" was on the 1st day of January, 1885, an "outstanding liability" of the Government by reason of the amount of cash having been, on that date, deposited with the Secretary of the Treasury "for the definitely ascertained indebtedness of the several Pacific railroad companies to their

lawful creditors" of the lien prior and paramount to that of the United States.

If the liability of the United States, or my statement of its liability in this respect, and as alleged in my petition, both the original and amended, has been disputed by any answer plea, or demurrer filed with this honorable court, I am as yet not made aware of the fact. The statement has gone before the Department of the Treasury, signed and sworn to as set forth in my affidavits, and stands unchallenged so far as I know.

The order of the court for the information that would deny the truth of the statement has gone forth, and does not bring the information that would deny it.

The statement has stood in form and in print before the eyes of every Secretary of the Treasury from the date of January 12, 1889, and not one has attempted to deny it or make any official answer tending to deny the truth, substantially, of my statements, as in petition contained. The President of the United States (Benjamin Harrison, while Chief Executive) caused all my statements to be placed before himself in official capacity, and in official capacity referred them "for the official action" (note the words) of the Secretary of the Treasury. The Supreme Court in 99 United States Reports supports the statement of my petition, that the United States is debtor to the "sinking fund" and in favor of the "lawful and just holders of paramount lien," as stated, "to the full amount of the deposits made under the provisions of such sinking fund as contained in the act of May 7, 1878." The committee referred to last has the information that the sum of \$64,623,512 is and has been withheld from the "possession of the lawful and just holders of such paramount liens by each and every Secretary of the Treasury, on the plea, or notion,

rather, that such officer held discretionary authority to make of such fund a sinking fund."

Congress, by act of March 3, 1887, directed that officer "to clear off such paramount lien incumbrance by payments (by payments, mark the words,) out of the sinking fund and provided that the entire amount be paid, whether the sinking fund was more or less than the amount due to the lawful owners of such bonds, or the "lawful creditors of the paramount lien aforesaid."

For this disobedience of the requirement—the direct, positive and special order of Congress—the present incumbent in that office is answerable. He can not and does not answer either Congress or this honorable court that he knows not the lawful creditors of the United States; that he has no legal knowledge of them that he is bound by law to take cognizance of.

He appears to rest contentedly upon "want of information, such information as would create an official liability on his part to answer" the demands made by me on the United States Treasury. He acts, or rather, neglects to act; and rests upon the assumption that his neglect and refusal to answer me in official manner, either by affirmation or by denial of the claims I have filed, prevents the consummation of my purpose to enforce an accounting from him; and he acts as if he expected that the entire body of Congress and the Supreme Court, including this honorable court, would unitedly be unable to compel him either to affirm or deny my right to an accounting, and thus prevent not only myself and my clients from obtaining the benefits of those acts of Congress upon which we rely for protection, but that all possible creditors of such lien, as Congress provided should be secured to "its lawful holders" (should others than myself and clients proved to be "lawful benefi-

ciaries") would be powerless and the courts named and Congress itself be powerless to enforce against his will the payment of the sums due.

With these statements I have concluded to include the following motion: That the Secretary of the Treasury be, and, with the approval of this honorable court, is hereby ordered to show cause, by his personal appearance before this honorable court, at the next ensuing rule day, why judgment should not be rendered in behalf of the United States for the benefit of the petitioners and claimants in said case and cause, No. 18003, in accordance with the statement of claims against the United States made to this honorable court.

Very respectfully submitted by

Attorney of Record in Case No. 18003.

To the Honorable Chief Justice and Judges thereof.

Washington, D. C., August 19, 1901, at 3 o'clock p. m.

Met pursuant to adjournment to continue taking testimony for complainant. Present same parties as before.

Whereupon Thomas J. Abel,, a witness of competent age, produced on the part of the complainant, and being first duly sworn according to law, was examined and testified as follows:

Q. Please state your name, age, residence and occupation.

A. Thomas J. Abel, 63 years past; Decatur, Ill. Merchant.

Q. Are you acquainted with Mr. Leonard C. Blaisdell?

A. Yes, sir.

Q. How long have you known him?

A. About seven or eight years.

Q. You say you were present before the Senate committee, 54th Congress, First Session, when Mr. Blaisdell testified?

A. Yes, sir.

Q. Who else was there?

A. Oh, a host of them; Mr. Blaisdell, and his friends; I can't enumerate them.

Q. You need not enumerate them. Was there anybody else?

A. Yes; we were encouraged by Senators and Representatives from all over the country (17).

Q. From this Pacific Railroads Committee?

A. No, sir.

Q. Who were the Senators you talked about?

Mr. Gould: I object to this as immaterial and incompetent.

A. Prominent among them was Senator White of California and Senator Knute Nelson of Minnesota, and Pettigrew of South Dakota.

Q. Did you know any of the members of this committee before whom this testimony was taken?

Mr. Gould: Objected to.

A. Yes, sir.

Q. What were their names and who was in the room at the time the testimony was taken?

Mr. Gould: I object.

A. Mr. Gear was chairman of the committee.

Q. Did he preside there when Mr. Blaisdell gave his testimony and when Mr. Huntington gave his?

A. No, sir; not when Mr. Huntington gave his testimony.

Q. Did you see Mr. Blaisdell sworn?

A. Yes, sir.

Q. And that is his testimony that is contained in this document?

A. Yes, sir.

Q. And you prepared the resolution with Mr. Blaisdell that Mr. Cullom introduced in regard to this matter?

A. Yes, sir.

THOMAS J. ABEL,
Merchant, Decatur, Ill.

Subscribed before me this 20th day of August, 1901.

DUDLEY T. HASSAN,
Examiner in Chancery.

SUPPLEMENTAL TO THE REVISED STATUTES OF THE UNITED STATES, Vol. 1, 1874-1881.

AN ACT to alter and amend the Act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act.

Section, Pacific Railways.

1. Net earnings, how ascertained.
2. Compensation due from United States to be retained; how applied.
3. Sinking fund.
4. Credits to and payments unto fund.
5. Secretary of Treasury to remit into sinking fund percentage on net earnings.
6. No dividend to be voted, &c., in case of default. Liability of officers to repay dividends illegally made.
Penalty on officers, &c., for voting, &v., to pay illegal dividends.
7. Application of sinking fund.
8. Priorities in application of sinking fund.
9. Liabilities to United States constitutes a lien on property of companies.

Companies not prevented from disposing of property in ordinary manner.

10. Enforcement of rights of United States.

11. Forfeiture of franchises on failure to comply with this act.

12. This and former acts subject to alteration, repeal, &c. Existing remedies not affected.

13. This act deemed as amending former acts.

PREAMBLE.

Whereas on the first day of July, Anno Domini eighteen hundred and sixty-two, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" and

Whereas, afterward, on the second day of July, Anno Domini eighteen hundred and sixty-four, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company, named in said acts, and under the authority thereof, undertook to construct a railway after the passage thereof, over some part of the line mentioned in said acts; and

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum,

payable half yearly to the amount of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation existing under the laws of the State of California, did, under the authority of Congress, become the assignee of the rights, duties and obligations of the said Central Pacific Railroad Company, as provided in the act of Congress passed on the third day of March, Anno Domini eighteen hundred and sixty-five, and did, under the authority of said act and of the acts aforesaid, construct a railway from the city of San Jose to the city of Sacramento, in California, and did demand and receive from the United States the sum of one million nine hundred and seventy thousand five hundred and sixty dollars of the bonds of the United States of the description before mentioned as issued to the Central Pacific Railroad Company and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said companies, the United States have paid in interest to the sum of more than thirteen and one-half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured

the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated, and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in, and consolidated with, said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have become merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued by way of loan to it, as provided in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half yearly, the principal sums of which amount to twenty-seven million two hundred and thirty-six thousand five hundred and twelve dollars; on which the United States have paid over ten million dollars interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amounts so issued to it by the United States as aforesaid and secured the same by mortgage, and which are, if lawfully disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of said Central Pacific Railroad Company, amount in the aggregate to more

than ninety-six million dollars, and those of the Union Pacific Railroad Company to more than eighty-eight million dollars; and

Whereas the United States, in view of the indebtedness and operations of the said several railroad companies respectively, and of the disposition of their respective incomes, are not, and cannot, without further legislation, be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of eighteen hundred sixty-two, as well as just security to the United States in the premises, and in respect of all matters set forth in said act, require that the said act of eighteen hundred and sixty-two be altered and amended as hereinafter enacted; and

Whereas, by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of eighteen hundred and sixty-four for the amendment and alteration thereof ought also to be exercised as hereinafter enacted. Therefore, be it enacted, etc.

SECTION 1. That the net earnings mentioned in said act of eighteen hundred and sixty-two, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness.

And the foregoing provision shall be deemed and taken as

an amendment of said act of eighteen hundred and sixty-four, as well as of eighteen hundred and sixty-two.

This section shall take effect on the thirtieth day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or either of said railroad companies existing prior thereto.

SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided for the uses therein mentioned.

SEC. 3. That there shall be established in the Treasury of the United States a sinking fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall in like manner, from time to time, be invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States.

All the bonds belonging to said funds shall, as fast as they shall be obtained, be so stamped as to show that they belong to said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury until they have

been endorsed by him, and publicly disposed of pursuant to this act.

SEC. 4. That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest, and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of one million two hundred thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding.

That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of eight hundred and fifty thousand dollars, or such thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by its compensation for services rendered for the United

States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding.

SEC. 5. That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that seventy-five per centum of its net earnings as hereinbefore defined for any current year are, or were insufficient to pay the interest for such year upon the obligations of such company in respect of which obligations there may exist (see act March 3rd, 1887), a lien paramount to that of the United States and that such interest has been paid out of such net earnings, said Secretary of the Treasury is hereby authorized, and it is made his duty, to remit for such current year so much of the twenty-five per centum of net earnings required to be paid into the said sinking fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid. .

(Note: For example, if the sum of 19 million dollars shall appear to the satisfaction of the Secretary of the Treasury as having been applied by the corporation to the liquidation of "interest accrued on mortgages of the paramount lien," it is the duty of said officer of the Government to remit an equal amount of the sums due to the United States on subsidy debt, from said corporations, which would in practice, eliminate the entire subsidy debt, when the whole amount due to the United States should be covered by the equal sums paid in interest upon the bonds whose lien are paramount to that of the United States.)

SEC. 6. That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said com-

panies respectively at any time when the said company shall be in default in respect of the payment of either the sums required as aforesaid to be paid into said sinking fund, or in respect of the payment of the said five per centum of the net earnings, or in respect of the interest upon any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States.

(This prohibits and makes unlawful the dividends, and all distributions constituting in effect dividends to stockholders or to persons acting in trust for stockholders, for no interest appears (from records) to have been paid to, or for any first mortgage, or paramount-lien creditor.)

And any officer or person who shall vote, declare, make, or pay, and any stockholder of any of said companies who shall receive any such dividend contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when recovered, shall be paid into said sinking fund.

(Note: Under such terms and provisions a suit in equity brought by the United States for the recovery of the value of the interest accrued on the bonds of the paramount lien (\$116,000,000), would be the lawful remedy to apply in this case.)

(Note 2nd: Under the terms of Act of March 3rd, 1887, the position of the Government as First Mortgage Creditor being attained by conforming to its provisions, there could be no doubt but that judgment equal to the amount stated, could be recovered against said corporations by the United States; to say nothing about the principal of the mortgage.)

Penalty. And every such officer, person, or stockholder who shall knowingly vote, declare, make or pay any such dividend, contrary to the provisions of this act, shall be deemed

guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding ten thousand dollars, and by imprisonment not exceeding one year.

SEC. 7. (See the connection with Section 3.) That there shall be established, etc. That the said sinking fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed and subject to the provisions of the next section.

SEC. 8. That the said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order.

(Note: But one claim has been filed against said fund; that claim is set forth in petition No. 18,003. But one party (the United States) was, at such time, or is now, known to have held or to have sought to hold, an interest in the said sinking fund other than the parties claimant under said petition. Therefore, said fund is not "lawfully chargeable upon the funds by said Section 8 of act of May 7, 1878, required to be paid into said sinking fund," because, see further, Section 8, requires payment to be made according to "lawful priorities," and "lawful priorities" other than recorded claimants before

the Treasury Department, and said court, do not exist.)

SEC. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into said sinking fund under said act, or under the acts hereinbefore referred to or otherwise, are hereby declared to be a lien upon all the property estate, rights and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed assets and income of said several railroad companies respectively from whatever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon.

(Note: The only question of the title of the United States becoming by force of the defaults made, clear and perfected is: Is there a "prior and paramount mortgage lien or claim thereon?")

(Note 2nd: The only question of the title to claim as set up in Court of Claims, No. 18,003, is: Is there, or can there be, any title paramount to that of the United States, and to that set up in said claim, set up in said Court, adversely to the claimants therein?)

(Note 3rd: If there is, and if such claim can be so set up, it is the business of such claimants to set it up, and not mine, or that of the Government to entertain outside talk about it.)

But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property in the ordinary proper and lawful course of their current business, in good faith and for valuable consideration.

SEC. 10. That it is hereby made the duty of the Attorney General of the United States to enforce by proper proceedings against the said several railroad companies respectively or

jointly, or against either of them, and others, all rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States.

And in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the Court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

SEC. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed for the period of six months next after such performance may be due, such forfeiture shall operate as a forfeiture of all the rights, privileges, grants and franchises derived or obtained by it from the United States.

And it shall be the duty of the Attorney General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be taken to be or construed in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare require.

And nothing herein contained shall be held to deny, exclude

or impair any right or remedy in the premises now existing in favor of the United States.

SEC. 13. That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of eighteen hundred and sixty-two, and of said act of eighteen hundred and sixty four, respectively, and of both said acts. (May 7, 1878.)

CHAPTER 5

Subscribed before Dudley T. Hassan, Examiner in Chancery, this 14th day of November, 1901.

Whereupon, William R. Russell, a witness of lawful age, produced on the part of the complainant, and being first duly sworn according to law, was examined and testified as follows:

Direct Examination by Mr. Wood.

Q. State your name, age, residence, and occupation?

A. William R. Russell; of lawful age; Kensington, Md.; clerk in the U. S. Treasury Department.

Q. How long have you been a clerk in the Treasury Department?

A. Twenty years; I have charge of the vault of the Treasurer's office.

Q. What is the name of that vault?

A. It is called the "Bond Vault."

Q. Do you keep a record of the contents of that vault?

A. I do not; that is kept by the bookkeepers. I merely keep a pencil memorandum.

Q. The United States Treasurer's report of 1869 on page 237, shows that there was deposited in his office the following: There have been left in the custody of the Treasurer as special deposits, within the fiscal year, as security that certain railroads, hereinafter mentioned, would be completed and equipped according to the requirements of the Government

as a condition precedent to the issue of the remaining portion of the Government bonds, subsidies as follows:

First Mortgage Coupon Bonds of the Union Pacific Railroad Company.....	\$1,600,000
First Mortgage Coupon Bonds of the Central Pacific Railroad of California.....	4,000,000

Do you know the location and custody of the first mortgage bonds of the Union Pacific Railway Company mentioned above?

A. I do not; I was not in the Treasury Department at that time.

Q. Is there any record kept of what became of them?

A. If they were in any one of the funds of either of the Pacific Railways, they were probably in the vault when (99) I took charge of it.

Q. Is your vault the only place they would be kept in?

A. I do not know where the bonds were. The probability is they were in the cash room.

Q. Have you ever run across the bonds mentioned in this trust fund?

A. I have not.

Q. Have you any record in your custody of the contents of that Bond Vault, showing who was the owner of the first mortgage lien on the Union, Central, Western and Kansas Pacific Railways?

A. Some of these first mortgage Bonds were in the vault since I have been in charge.

Q. Are they there now?

A. No, sir.

Q. Do you know what became of them?

A. They were sent to the Assistant Treasurer at New York by messengers and by express, for the purpose of redemption

by the railway companies, being usually sent in advance of their maturity. I took some of them to New York myself and delivered them to the Assistant Treasurer of the United States at the Sub-Treasury.

Q. Did you make the collection or just delivered them to the Assistant Treasurer?

A. I merely acted as messenger to take them to New York and delivered them to the Assistant Treasurer of the United States for redemption by the said railway companies.

Q. Do you know what amounts you delivered?

A. They varied at the different times—the first were dated in 1865 and were 30-year bonds. They began to mature in 1895—from that on to 1899, and were sent out as fast as they became due.

Q. What railroads were they on?

A. Union, Central, Eastern Division of the Union (100) or Kansas Pacific, Sioux City and the Western Pacific Railways.

Q. Do you recollect the total amount of them?

A. I do not.

Q. Then all of these first mortgage bonds have been passed out of your vault and you have none of the first mortgage bonds of the Central, Union, Western or Sioux City or Kansas Pacific Railways, in your vault or under your control?

A. No, sir; they have all been sent or taken to the Assistant Treasurer of the United States at New York.

W. R. RUSSELL.

Subscribed before me this 14th day of November, 1901.

DUDLEY T. HASSAN,

Examiner in Chancery.

Room 217 Bond Building,
Washington, D. C.,
September 3, 1901,
At 10 o'clock A. M.

Met pursuant to adjournment to continue taking testimony on behalf of the complainant.

Present: D. W. Woods, Esq., for complainant; Ashley M. Gould, Esq., for defendants.

Whereupon, Cecil Clay, a witness of lawful age, called in behalf of the complainant, being first duly sworn according to law, was examined and testified as follows:

Direct Examination by Mr. Wood.

Q. State your name, age, residence and occupation?

A. Cecil Clay; I am in the 60th year; No. 1513 S St., Washington, D. C.; Chief Clerk in the Department of Justice.

Q. How long have you been Chief Clerk of that Department?

A. Since December, 1883.

Q. What are your duties in that office?

A. The ordinary duties of a chief clerk. I receive all incoming mail; superintend the filing of all records, and recording all correspondence in the Department, and all the outgoing mail.

Q. Are your duties defined by rule or law?

A. Not defined by either.

Q. Is there any record in your office showing the statement of the amount of money demanded of the Central Pacific Railway in settlement of the first mortgage lien on that railroad?

Mr. Gould: I object to the question because it is irrelevant, immaterial and has no bearing upon the issue in this case.

A. By making a thorough examination of all filed I could

ascertain any records exists; I have no personal knowledge of any at present.

Q. Is there any record in your office showing a statement (40) of the amount of money demanded of the Union Pacific Railway in settlement of the first mortgage lien on that railroad?

Mr. Gould: Same objection.

A. By making a thorough examination of all files I could ascertain if any record existed; I have at present no personal knowledge of any.

Q. Is there any record in your office showing a statement of the amounts of money demanded of the Western Pacific Railway in settlement of the first mortgage lien on that railroad?

Mr. Gould: Same objection.

A. By making a thorough examination of all files I could ascertain if any record existed; I have no personal knowledge of any at present.

Q. Can you make the examination and report to this examiner?

Mr. Gould: I instruct the witness that he need not make the examination and need not answer the question, because it irrelevant, incompetent and immaterial.

A. Not answered.

Q. Is there (are) record in your office showing who was the owner of the first mortgage lien on the Central Pacific Railway?

Mr. Gould: I object to this question because it is irrelevant, incompetent and has no connection with the issue in this case.

A. I could not answer without making an examination of the files.

Q. When can you make an examination of the files and report what you find?

Mr. Gould: I object to this question because it is irrelevant, incompetent, and has no connection with the subject sought to be brought out.

Q. Is there any record in your office to show who (41) was the owner of the first mortgage lien on the Union Pacific Railway?

Mr. Gould: Same objection.

A. I do not know; I would have to examine the files.

Q. When could you examine the files?

Mr. Gould: I instruct the witness not to answer this question on the basis of the two former, until ordered by the court.

A. Not answered.

Q. Is there any record in your office to show who was the owner of the first mortgage lien on the Western Pacific Railroad?

Mr. Gould: Same objection.

A. Not answered.

Q. When could you make the examination and report to this Examiner?

Mr. Gould: Same objection.

A. Not answered.

Q. Have you not made an examination of your files and found a statement made to the Central Pacific Railway in regard to the claim of the first mortgage lien?

Mr. Gould: I object to the question for the reasons given above.

A. I looked over the files, probably two weeks ago, and found a report made by Mr. Hutchings, but I do not know whether I am at liberty to answer such question without consulting the Attorney General; that is, whether I am called upon

to say what is on the files, or what is not on the files, without consulting the Attorney General.

Q. Who is this man Hutchins you refer to?

A. He is a lawyer and a special assistant employed by the Attorney General.

Q. Is he the one that had charge of making the statement to the Central Pacific Railway (42)?

A. No.

Q. Who had charge of it?

A. The Attorney General.

Q. What is his name?

A. John W. Griggs.

Q. Was the settlement made in your office?

Mr. Gould: I object to the question because it is incompetent, irrelevant and immaterial and has no connection with the issue in this case.

A. That I don't know.

Q. Was any part of the statement made by you or known to you?

A. I only know of it as a business being transacted in the department.

Q. In the correspondence from the Union Pacific Railway at any time since you have been chief clerk, have they asked who was the owner of the first mortgage lien?

Mr. Gould: I object to the question as incompetent, immaterial, and irrelevant.

A. I am entirely ignorant of the same.

Q. Could you ascertain by records if they show it?

A. I could ascertain just what the records show; that is their contents.

Q. Did you have charge of the correspondence of the At-

torney General from the Central and Union Pacific Railways in regard to the first mortgage lien?

A. No, sir; all such correspondence was referred directly to the Attorney General; the marks on the envelopes indicating that the Attorney General had special charge of such matters.

Q. Could you find out from the records?

A. The records are on general file in the department.

Q. When could you make the examination and report the fact to this Examiner (43)?

Mr. Gould: I instruct the witness that he need not make the examination, unless instructed to do so by the court.

A. I could do it within forty-eight hours after receiving instructions from the court.

Q. I now read to you from page 35 of the report of the Attorney General for 1900, under head of Pacific Railway matters: "On September 19, 1900, I received an additional dividend of \$132,942.89 on account of the deficiency due the United States on account of the subsidy debt of the Kansas Pacific branch. The case against the American Loan and Trust Company, of Boston, as trustee, the object of which is to secure on account of said deficiency claim certain moneys in the hands of the trust company which are the proceeds of securities mortgages for the benefit and further security of first mortgage bonds of the Kansas Pacific Railway, and for the benefit, protection and further security of the United States in respect to their subsidy bonds and interest thereon, is still undisposed of. It is my expectation that ultimately the Government will receive an additional dividend from this source. The total sum heretofore paid or secured to be paid to the United States on account of Pacific Railway subsidy

claims since November 1st, 1897, is \$124,544,550.84."

Who made up that statement in your office, if you know?

A. It was made up by the Attorney General himself.

Q. Did you have any knowledge of the facts in that regard?

A. None whatever.

Q. Is there anyone who has?

A. I doubt it, because the Attorney General has exclusive charge of it.

Q. In the remittance from your office to the Secretary of the Treasury who has charge of the same?

A. I have no idea (44).

Q. Who would have charge of that collection and remittance in your office?

A. I do not know how that money was paid or who paid it; I have no knowledge of who made the payment.

Mr. Wood: That is all. Take the witness.

Mr. Gould: I have no cross-examination until this has been submitted to the Court.

CECIL CLAY.

Subscribed before me this 21st day of September, 1901.

DUDLEY T. HASSAN,

Examiner in Chancery.

Sworn and subscribed before Dudley T. Hassan, Examiner in Chancery, 26th of August, 1901. Washington, D. C.

Eugene B. Daskam, a witness of lawful age, produced by and on behalf of the complainant, having been duly sworn, was examined by Mr. Wood:

Q. State your name, age, residence and occupation?

A. Eugene B. Daskam; 60 years; Chief of the Division of Public Money's Office of the Secretary of the Treasury.

Q. How long have you held that position?

A. Since 1877.

Q. What position did you hold prior to 1887, if any, in the Treasury Department?

A. I was clerk in the same division before I was made chief.

Q. How long?

A. For some years.

Q. About how many?

A. From 1867 to 1877.

Q. Were you in any other position before that?

A. Yes, sir.

Q. What?

A. In the office of the Third Auditor of the Treasury Department.

Q. How long were you in that?

A. Two years.

Q. Were you in any office prior to that?

A. No, sir.

Q. What year did your service in the Treasury Department Begin?

A. 1865.

Q. What month in 1865?

A. May (19).

Q. What were your duties in the first office you were in?

A. To examine Quartermaster's accounts.

Q. And what were your duties in the next position to which you were assigned?

A. To enter receipts by Collectors of Customs.

Q. And what in the next position you held?

A. I have been on that straight through. I became Assistant Chief of the division and the chief.

Q. What are your duties as chief of the public money's division?

A. To look after the work assigned to that division. The

Secretary's is divided up into eight different divisions. Each division has a certain class of work. Mine is the division of public moneys and general receipts.

Q. What business is assigned to you as Chief of the Public Moneys Division?

A. I have general charge of the clerical force and the correspondence.

Q. Will you give us some idea as to what you do. Do you have to decide what fund public moneys go to, or is that decided before it comes to you?

A. There are a great many different officers—public officers who make deposits to the credit of the United States and send in certificates. I assign these to different desks.

Q. Then you pass upon the character of the fund and send it to the desk to which it belongs?

A. If that is what you call it. Each public officer is obliged to render an original certificate of deposit.

Q. If the Attorney-General collects any fund and sends (20) on account of it, does he send the money direct to the Treasury to the Secretary?

A. Usually he deposits with the Treasurer to the credit of the United States.

Q. And makes a return?

A. No, he makes no return. The original certificates which he receives for the deposit comes to my division.

Q. I will ask you to examine the Message of the President of the United States to the two Houses of Congress, at the beginning of the first session of the Fifty-fifth Congress, in 1899 at page 36 of the message, from the words, "under the authority of Congress, approved July 2, 1898," to that point (Indicating)?

A. "A period of two years"?

Q. Yes.

A. You wish me to read it?

Q. No; just examine it and state in what fund this amount of money the President refers to has been deposited and credited; and if not all in the same fund, state in what fund each part of it went?

Mr. Gould: I note an objection to the question as irrelevant and incompetent.

A. I have read it. I cannot tell except in a general way if that money was deposited in the Treasury, the original certificate would come to my division, and in due course of time, I would prepare a list on which a warrant would be issued, covering that amount into the Treasury. The warrant would be prepared in the Warrant Division.

Q. The Warrant Division clerk is compelled to report to you the amount of that warrant?

(21) A. Yes, sir.

Q. I understand you are the chief clerk of the Division of public moneys?

A. Yes, sir.

Q. And you know into what fund every one of these dollars has gone?

A. I do not know without looking it up.

Q. I request you to make an examination of the records and to return here at the next session and state into what funds these moneys I have called your attention to have gone?

(The Examiner here read from his notes, at request of counsel the answer of witness reported on page 15 of the record immediately after the objection of Mr. Gould.)

Q. And that would show exactly to what fund it was credited?

A. Yes, sir.

Q. Your books would show that?

A. Yes, sir.

Q. I ask you to ascertain what the facts are and report here at the next session—as to these funds I have called your attention to, referred to in the President's Message.

The Witness: You say these have been covered into the Treasury?

Q. That is what the message says.

Mr. Gould: I object to the question because there is no evidence that the money has ever been covered into the Treasury, and I object further to the question because this witness has no control or custody of the records, and has no right, authority or power to give the information sought for by the question, and I instruct the witness now that he need not produce the records in pursuance of the question (22) to the Court to determine whether the witness shall be compelled to answer.

Mr. Gould: I shall reserve my cross-examination of this witness until the Court passes on this question.

Q. In order to make the record clear, I will ask this question. I ask you to examine the books in your office and state to what fund the Union Pacific, cash \$58,448,223.75 has been credited; also to what fund the Kansas Pacific, cash \$6,305,000 has been credited; also to what fund the Central and Western Pacific, cash \$11,798,314.14 has been credited; also the note \$47,050,172.36 has been credited; also the Kansas and Pacific dividends for deficiency due to the United States, cash \$821,897.70; making a total of \$124,421,607.95. Please examine the records in your office and ascertain to what fund you, as Chief of the Division of Public Moneys, deposited this money, and report to this Examiner as soon as you have ascertained the fact?

Mr. Gould: When the witness has examined the books and is here again, then, if you see fit, I will make objection. Until that time the Examiner nee (jot) certify the record to the Court.

Thereupon the parties adjourned to meet again at the same place on Thursday, August 22nd, at 3 p. m.

Washington, D. C.,

Thursday, August 22, 1901.

Three o'clock P. M.

The parties met at the office of the Examiner pursuant to adjournment.

Present for complainant, Mr. Wood; present for defendant, Mr. Gould.

Whereupon, the Direct Examination of Eugene B. Daskam continued by Mr. Wood.

Q. Are you ready to answer the question which was pending at the time the last session closed?

A. I have written down by answer.

Mr. Gould: Before the question is answered, I desire to object to the question as incompetent, irrelevant and immaterial, and as having no possible bearing on the issues involved in this case.

The Witness: The question is, What fund the Union Pacific cash and other items mentioned have been credited. My answer is, To no fund at all. The money was deposited in the Treasury and the different items mentioned are covered in just that way (reading from memorandum).

The sum of \$58,448,223.75 referred to in the message was covered into the Treasury by warrant as a miscellaneous receipt derived from payment of subsidy debt due from Kansas Pacific Railroad Company.

The sum of \$11,798,314.14 was covered into the Treasury

(24) by warrant as a miscellaneous receipt from part payment of indebtedness of the Central Pacific Railroad Company to the United States.

The sum of \$821,897.70 was covered into the Treasury by warrant as a miscellaneous receipt from payment of dividend to United States by Receivers of Union Pacific Railroad Company.

Q. Are you the chief of the Miscellaneous Division also?

A. No, sir; the Miscellaneous Division is a division of itself with a chief of its own. It is one of the divisions of the Secretary's Office, known as the Miscellaneous Division.

Q. But not under you?

A. No, sir.

Q. I see that under the Public Debt Division, 292, you have charged Pacific Railway bonds.

A. There is no public debt division in the Secretary's Office.

Q. Who makes that? (handing pamphlet to witness.)

A. That is the report of the First Auditor. The First Auditor has a division known as the Public Debt Division. That is a bureau of the Treasury Department and has nothing to do with the Secretary's Office.

Q. What Auditor is that?

A. The First Auditor of the Treasury. The Auditor for the Treasury Department, he is called now.

Q. When was his office changed to that?

A. The Dockery Bill changed it. Before that, they were known as the First, Second, Third, Fourth, Fifth, and Sixth Auditors; they are now known as the Auditors for the Treasury, the War, Navy, State, and other Department Post-Office; that document you have is an old one. That office was then known as the First Auditor (250).

Q. Then we are to understand that this money has been

credited to no particular fund?

A. No, sir, it has not.

Q. On page 62 of the Annual Report of the Secretary of the Treasury June 30, 1872, I find under the head of "Trust Funds" the following: "There are also held special deposits in sealed packages, the contents and value of which are unknown." I will ask if your department keeps any record of that transaction or ever did, from 1865 down?

A. That is a report of the Treasurer of the United States and contains the different items found in his vaults.

Q. I ask if your department keeps any record of that?

A. No, sir.

Q. That, you say, is simply a matter pertaining to the Treasurer and the contents of his vaults?

A. Yes, sir.

Q. And your office keeps no record of it?

A. Except when we make an examination of the Treasurer's Office.

Q. Did you ever make an examination of the Treasurer's office on that subject?

A. Not on that subject; but whenever the Treasurer is changed an examination of his office is made.

Q. But no record is kept of that in your office?

A. No, sir.

Q. How do you know what it is kept in his vault?

A. I have been connected with the examination several times, and know the working of his office. I know what is known as the "working vault" of the Treasurer, there are more or less of these packages found. Some of them belong to clerks and are just kept there, and marked "private" and "special" (26).

Q. You will see that remark is made after the heading

"Trust Funds." Some other head of department might have funds in these for a short time.

Q. My question is, Why are they denominated "Trust Funds"?

A. Don't you see—

Mr. Gould: One moment. I object to the question as calling for a conclusion of law; and also as incompetent, irrelevant and immaterial.

Mr. Wood: I insist that it is a conclusion of fact.

The Witness: It doesn't follow that it is a trust fund, if that is your question.

Q. That is the conclusion.

A. There is a period there; and this is another sentence and another paragraph.

(—) On pages 4 and 45 of the same report, I find Registered Central Pacific Bonds, registered Union Pacific Bonds and other railway bonds. I will ask you if your office keeps any record of that, or if you know anything about that?

Mr. Gould: I object to the question as irrelevant, incompetent, immaterial and as too general.

(—) It is a report of the Treasurer of the United States? It is his report and he knows what he has in his vaults. That is a description.

Q. But I am asking if your office keeps any record of anything connected with that?

A. No, sir; the Treasurer's Office is the custodian of those bonds.

Mr. Wood: I offer this report of the Secretary of the Treasury for 1872, in evidence, and will identify it later on, as I will all the others I have offered, by the Superintendent of Public Documents.

Mr. Gould: Objected to as irrelevant, incompetent and (27)

immaterial, and as having nothing to do with the issue in this case, and as being improperly identified, and as hearsay evidence.

The Witness: It is a matter of regulation.

Q. Did your office have anything to do with the Secretary who made the calls for bonds, May 17, 1884, known as calls 121, 122, 123, 124, 125, 126, 127?

A. You mean my division?

Q. Yes.

A. That belongs to the Division of Loans and Currency, Secretary's Office.

Q. That call would be made in the loan division?

A. Loan and Currency.

Q. You have kept no record of that call?

A. No, sir.

Q. Neither before nor after the money was collected?

A. I have to do with all moneys deposited in the Treasury, but I have nothing to do with these calls.

Q. If a call is made and the money collected, then you have to do with it?

A. I have to do with money collected, and the certificates showing money deposited.

Q. Then with these calls made on May 17th by the Secretary if the money was collected, your records would show to what fund it was credited?

A. It does not go to any fund. It goes into the general Treasury with other moneys.

Q. In this whatever-you-call it they report what collection is made and from what—

A. On what account is it collected.

Q. And that you keep a record of it in your office?

A. Yes; the certificate of deposit. (28)

Q. In issuing the subsidy bonds to the Union Pacific Railway, and the Central Pacific Railway, was there any record made of that transaction in your office?

A. No, sir.

Q. You have nothing to do with them?

A. No, sir.

Q. In what office would that exclusively be set forth?

A. Loans and Currency, I should say.

Q. I now call your attention to the Treasurer's report of 1899, on page 25, under the head "Trust Funds," and ask you to read from the word commencing "On January 6th, 1899" to the words "Central Pacific Railway as collateral security for the notes."

Mr. Gould: I object to the witness being compelled to read from a book not in evidence, and I instruct him that he need not read from it. If counsel has any question to ask founded on it, he can ask such question.

Q. Mr. Daskam, I now read what you requested me to read: "On January 6th, 1890, \$242,000 in the United States and Western Pacific bonds, which remained in the sinking fund of the Central Pacific Railroad were by direction delivered to the Secretary of the Treasury for disposition under the contract with the purchasers of the last named road. On February 18 following there were received twenty promissory notes of the Central Pacific Railroad Company for as many equal parts of the aggregate sum of \$58,812,715.60, bearing interest at 3 per cent and maturing at successive intervals of six months from February 1, 1899, but payable before maturity. By direction of the Secretary on March 3, the first four notes were delivered to him for payment, leaving \$47,050,172.48 in notes on hand in accordance with the contract, the re-organization (29) committee of the road, on October 7, deposited \$47,056,000 of

the first mortgage bonds of the Central Pacific Railway Company as collateral security for the notes."

I ask you if anything pertaining to that transaction is recorded in your office, or if you have any knowledge of it?

Mr. Gould: I object to the question as irrelevant, incompetent and immaterial, and as having no bearing on any issue in this case.

A. I cannot tell. If there was money deposited growing out of that transaction and a certificate was issued, that would come to my division. That is about as near as I can answer that question.

Q. This record reveals the fact that the notes were deposited there?

A. Deposited where?

Q. Where this says they were. Did you understand what I read?

A. The notes were deposited?

Q. It is said in there, delivered to the Secretary of the Treasury for disposition under the contract with the purchasers of the last-named road. Now, I ask you whether any record of these notes would appear in your office, I understand you to say no, but if there is any money growing out of the transaction which was deposited, there would be a record of that in your office; is that what you said?

A. Yes, sir.

Q. I understand from you that if any money was paid on these notes—

A. If the notes were collected and deposited a certificate would issue and it would come to my division (30).

Mr. Wood: I offer that report in evidence and will identify it later on, as I will all the others I have offered, by the Superintendent of Documents.

Mr. Gould: I object to the admission of that report in evidence, because it is irrelevant, incompetent and immaterial and has no bearing on any issue in this case.

The Examiner marked said pamphlet "Complainant's Exhibit No. 25."

Q. Now read from page 237, Finance Report of the Secretary of the Treasury, 1869, Treasurer's Report, under the heading of "Trust Funds":

"There remains in the custody of the Treasurer, held by the Secretary of the Treasury, in trust for the Smithsonian Fund, six per cent, stocks of the State of Arkansas that matured in 1868; amounting at their par face value, interest excluded, to \$538,000. There have been left in the custody of the Treasurer as special deposits, within the fiscal year, as security that certain railroads, hereinafter mentioned, should be completed and equipped according to the requirements of the Government, and as a condition precedent to the issue of the remaining portion of the Government bonds, subsidies as follows, viz:

First Mortgage coupon bonds of the Union Pacific

Railroad Company	\$1,600,000
------------------------	-------------

First Mortgage coupon bonds of the Central Pacific

Railroad Company of California.....	4,000,000
-------------------------------------	-----------

Total trust funds held	\$6,138,000
------------------------------	-------------

The above is exclusive of any special deposits received and held in sealed packages, the contents of which are, and their value is unknown; and of deposits of the United States stocks, held in trust as custodian for the "Sinking Fund."

I will ask you if any part of that Trans(31)action would be recorded in your office?

A. No, sir.

Q. Where would that record be kept?

A. In the Treasurer's office, I should think.

Q. In your examination of any of these funds, did you find any of these there?

A. Very likely; I could not say. 1869?

Q. Yes.

A. That is a little too early for me.

Q. What year did your examination begin in?

A. I don't remember.

Q. You just simply say there is no record in your office?

A. Not so far as I know.

Mr. Wood: This document I offer in evidence and will identify it when I identify the other documents.

Mr. Gould: I object to the admission of this document as incompetent, irrelevant, and immaterial, and as having no connection with any issue in this case.

The Examiner marked said Finance Report as "Complainant's Exhibit No. 28."

The Witness: My division was not organized until 1867.

Q. I now read from page 35 of the Report of the Attorney-General for 1900, Department of Justice, under the heading "Pacific Railroad Matters," as follows:

"On September 19, 1900, I received an additional dividend of \$132,942, on account of the deficiency due the United States on account of the subsidy debt of the Kansas Pacific branch. The case against the American Loan and Trust Company of Boston, as Trustee, the object of which is to secure on account of said deficiency claim certain moneys (\$2) in the hands of the Trust Company, which are the proceeds of securities mortgaged for the benefit and further security of first mortgage bonds of the Kansas Pacific Railway, and for the benefit, protection, and further security of the United States in re-

spect to their subsidy bonds and interest thereon, is still disposed of. It is my expectation that ultimately the Government will receive an additional dividend from this source.

"The total sum heretofore paid or secured to be paid to the United States on account of Pacific Railway subsidy claims since November 1, 1897, is \$124,554,550.84."

I ask you if any record of that entire transaction is kept in your office other than as you have stated?

Mr. Gould: I object to the question as immaterial, incompetent, and irrelevant and having no connection with the issue we are engaged upon here.

A. I can only answer in a general way as I did to the other question; that if it resulted in a deposit, a certificate would come to my division and I would have it.

Q. He says here that the total sum heretofore paid or secured to be paid is so much. Do you understand that to mean that he still holds it or that it has been paid?

A. All I know is that if a deposit was made, I would get a certificate of it.

Mr. Wood: I now offer this report in evidence, and will identify it later on by the Superintendent of Public Documents.

Mr. Gould: I object to this book as irrelevant, immaterial and incompetent and as not connected with any issue in this case. (33)

The Examiner marked said report "Complainant's Exhibit No. —."

Q. I now read from Circular No. 113, Treasury Department, called "Information respecting United States Bonds, etc., issued July 2, 1900," as follows:

"The Dingley Tariff Act took effect on the 24th day of July, 1897 * * * * * "Receipts from Customs and Total Receipts from all sources under the Dingley Act. Twelve months end-

ing July 31, 1898. Customs, \$147,777,941.66; All sources, \$410,141,079.53;" then there is a figure referring to a Note, which is "Includes \$64,751,233.75 sale of Union Pacific and Kansas Pacific Railroads."

I will ask you if you kept any record of any of that fund being paid in?

A. The same answer to that as I gave before. That was prepared by A. T. Huntington, Chief of the Division of Loans and Currency.

Q. My question is whether you have any record of that?

A. How do I know whether I have any record of it? If it includes a certificate of deposit, I have a record of that.

Q. And you would make the same answer as to the other items included in this statement?

A. That was gotten up for the information of the general public, as I understand from Mr. Huntington, and includes a whole lot of things there.

Q. Your answer would be the same as to the other items included under other notes 3 and 4 of this statement?

A. Yes, sir.

Mr. Wood: I offer this circular in evidence and will identify it when I have the Superintendent of Documents on the stand. (34)

Mr. Gould: I object to putting this circular in evidence as incompetent, immaterial and irrelevant and as having no connection with the issues involved in this case.

The Examiner marked the said Circular "Complainant's Exhibit No. 30."

Q. I read from page 65 of the Annual Report of the Secretary of the Treasury, June 30, 1900:

"Central Pacific debt. All amounts which have become due under the agreement dated February 1, 1899, for the settle-

ment of the indebtedness of the Central Pacific Railroad Company to the United States have been paid by the railroad company in full, including interest on all outstanding notes to August 1, 1900. The company having previously anticipated payment of the notes maturing on or prior to February 1, 1901, has, during the current year anticipated payment of the note due August 1, 1901, so that already one-fourth of the whole principal of the debt has been paid. The next payment on account of principal does not mature until February 1, 1902."

I will ask you if any record of those payments have been kept in your office?

A. I will make the same answer.

Mr. Wood: I offer that in evidence and will identify it when I have the Superintendent of Public Documents on the stand.

Mr. Gould: I object to that pamphlet being received or introduced in evidence as immaterial, irrelevant and incompetent and having no connection with any issue involved in this case.

Cross-Examination, by Mr. Gould.

Q. In your answer of the first question you today (35) you said that the records of your division showed that the sum of \$58,448,223.75 referred to in the President's message, was covered into the Treasury by warrant as a miscellaneous receipt derived from the payment of the subsidy debt due from the Union Pacific Railroad Company. I will ask you to state to whom that debt was due?

A. To the United States.

Q. And therefore you state as I understand that when the money was paid it was turned into the general fund of the United States as it was in payment of a debt due the United States?

A. Yes sir.

Q. And you also state the same with regard to the \$6,303,000 Kansas Pacific cash?

A. Yes, sir; it was covered into the Treasury by warrant as a debt from the Kansas Pacific Company.

Q. To whom was the debt due?

A. To the United States.

Q. And it was turned into the general funds of the United States when received in payment of that debt?

A. Yes, sir.

Q. And do you also answer the same with regard to the \$11,798,314.14 Central and Western Pacific Company?

A. Yes, sir; it was covered into the Treasury by warrant as a miscellaneous receipt for the payment of the indebtedness of the Central and Western Pacific.

Q. It was a debt due the United States?

A. Yes, sir.

Q. And the same as to the item of \$821,897.70? That was covered into the Treasury by warrant as a miscellaneous receipt by the Receivers of the Union Pacific Railroad Company?

A. Yes, sir. (36)

Q. You may state whether that was a debt due from the railroad companies to the United States.

A. Yes, sir; and went into the Treasury as a miscellaneous receipt swelling the Treasurer's balance, just the same as any other sort of receipt.

Q. Are you familiar with the manner in which this debt due the United States by these railroad companies was contracted?

A. No, sir; I am not. I just know in a general way that the United States guaranteed the interest on the bonds that were issued; that they owed the United States the interest and principal.

Q. That is, that these railroad companies owed the United States for the principal of what was known as the Subsidy Construction bonds, the Railway Aid Bonds, and that these sums were collected from the railroads of these bonds and the interest on them, and covered into the Treasury?

A. Yes, sir; it was done through commission.

Q. A commission was appointed to adjust the claims of the United States?

A. Yes, sir; as receivers.

Q. And, of course, if this was turned into the Treasury as a part of the general receipts, it was a trust fund?

A. No, sir; no more than the customs or any other receipts. All moneys that come into the Treasury in that way are deposited to the credit of the Treasurer of the United States, and under the law all moneys are subject to his drafts.

Re-Direct Examination, by Mr. Wood.

Q. If the first mortgage lien was paid off, would your (37) records say whether it had been paid off?

Mr. Gould: I object to the question as indefinite and general and as irrelevant and incompetent. It does not state what first mortgage liens are meant, or the amount of them on the relation that the United States bears to them in any way.

A. No, sir; we wouldn't know anything about it.

Q. You would not know anything about the paying off of any indebtedness that that fund might have been collected for?

A. No.

Q. Well, the Subsidy Bonds?

A. No, sir.

Q. You say you did have some general knowledge as to the manner in which that indebtedness was contracted?

A. The first mortgage bonds?

Q. Yes.

A. No, I don't know anything about it.

Q. Your office has nothing to do with paying off of that subsidy fund?

A. No, sir.

E. B. DASKAM.

Subscribed before me this 26th day of August, 1901.

DUDLEY T. HASSAN,
Examiner.

CHAPTER 6

I, CHARLES DURKEE, a resident of the City and County of Kenosha, in the State of Wisconsin, (for two years past and upwards at Salt Lake, Utah), of sound, disposing mind and memory and mindful of the uncertainty of this life, do make this my last will and testament—hereby revoking all others heretofore made:

I do hereby devise, bequeath and convey by this, my will, unto my executors, Harvey Durkee, of Kenosha, aforesaid, and Franklin H. Head, late of Kenosha, now of Utah—and to which of them may act as executor and to the survivor of said executors all my real and personal estate rights and credits with the right to sell, dispose and convey the same without order of any court or officer, in such amounts, and on such terms, as they may deem for the best intentions of this, my will—always taking adequate security where credit may be given. This is upon the following trusts, to-wit:

First. To pay all my debts, funeral expenses, and for a suitable monument for my grave.

Second. Whereas my beloved wife, Caroline Durkee, has now settled upon her an annuity during her life of six hundred dollars annually, and she has a life lease of my homestead in Kenosha City—I do herefore, in addition thereto and in lieu of all dower and right of dower (which she will relinquish to my executors in due form), direct my said executors to invest in interest-paying securities so much of my assets that the annual interest thereon will amount to one thousand dollars annually; which sum of one thousand dollars annually

accrued my acting executor will pay one in semi-annual portions, during her natural life, to my said wife, Caroline.

Third. If my said wife, Caroline, shall have any child or children of mine born to her either before or after my decease at any time, then my acting executor will pay out of the residue of such assets, whenever such child or children arrives at the age of twenty-one years, the sum of five thousand dollars to each; and if there be a lack of funds, then so much as there may be, share and share alike, after deducting expenses of administration.

Fourth. Out of said assets my acting executor will pay to the board of officers of the free schools of Kenosha City, Wisconsin, five thousand dollars, to be, by said board, expended in and towards procuring a telescope for the use of the free schools of said City of Kenosha; which board or corporate power of said free schools will make such rules and regulations as to the care and use of said telescope as shall make it useful to the teachers and scholars in said schools for all time to come.

Fifth. All the balance and residue of my assets and property, of whatever name and kind, my executors, or the acting one, will expend for the cause of education of the youth of both sexes, in such way and manner as my executor or executors shall deem best for the good of the youth as citizens of our common country; and when on the decease of my wife, Caroline, the said securities invested to make the annuity to her, shall be freed from that charge; then whatever may remain, after providing for the matters stated above under the third and fourth subdivisions, to be appropriated under the fifth subdivision.

Sixth. If for any cause there shall be no executor, then I will and declare that the administrator duly appointed with this, my will annexed, shall have all the powers and duties and

obligations of my said executors, such powers, duties and obligations of administrator to be supervised by the proper court in probate that may make the appointment—and executors and administrators to make due report to the proper court annually.

My desire is that my body be buried in the cemetery, near the South Ward, in the City of Kenosha.

Seventh. My will also is, that my gold watch, chain and appendages, be the property of my nephew, Charles, named after me, the son of said Harvey Durkee, and that my executors deliver the same to him as, and for, his property—the gift of his uncle.

Note—In the third item above the words “of mine” duly interlined.

Signed and sealed at Kenosha, Wisconsin, this 12th day of February, A. D. 1869.

(SEAL)

CHARLES DURKEE.

This instrument executed this twelfth day of February, 1869, by Charles Durkee in our presence, who then & there declared it to be his last Will & testament, & he requested us to sign the same as witnesses, which we now do, in his presence & in the presence of each other.

MARK DRESSER,

J. J. PETTIT,

of Kenosha City, Wisconsin.

IN PROBATE: KENOSHA COUNTY COURT.

To the Judge of Said Court:

The petition of Harvey Durkee and Franklin H. Head, of

Kenosha, Kenosha County, Wisconsin, respectfully represents that Charles Durkee, late of Salt Lake City, Utah, deceased, the 14th day of January, 1870, at Omaha, Nebraska, died testate, as petitioners believe; that the instrument in writing herewith presented to this court, is the last will and testament of said deceased, as petitioners believe; and that the said petitioners are the identical Harvey Durkee and Franklin H. Head named and appointed in and by said last will and testament as executors thereof.

Your petitioners would further represent that the goods, chattels and personal estate of said deceased amount to about forty thousand dollars; and that said deceased left debts due and unpaid to the probable amount of five thousand dollars.

Your petitioners would pray that a day be appointed for hearing the proofs of said last will and testament, and that public notice thereof be given to all persons interested, as this Court shall direct; and that upon the proof and allowance of said will, and the approval of the bond of your petitioners, letters testamentary be to them issued thereon; and appraisers appointed, according to the rules and practice of this Court.

HARVEY DURKEE.

FRANKLIN H. HEAD,

Dated at Kenosha this 24th day of January, A. D. 1870.

STATE OF WISCONSIN, }
Kenosha County, } ss:

On this 24th day of January, A. D. 1870, before me personally appeared the above named Harvey Durkee & Franklin H. Head and made oath that they had heard read the above and foregoing petition, subscribed by them and know the contents thereof, and that the same is true of their own knowledge,

except as to the matters which are therein stated to be on their information and belief, and as to those matters he believe it to be true.

I. W. WEBSTER,
County Judge.

STATE OF WISCONSIN, }
Kenosha County Court. }

In Probate.

In the matter of the last Will & Testament
of

CHARLES DURKEE, deceased.

At a County Court held in Probate in and for the County of Kenosha aforesaid at the office of the Probate Judge in the City of Kenosha, in said County, on the 24th day of January, A. D. 1870, at one o'clock P. M. of said day before the County Judge in and for the County of Kenosha aforesaid:

Present the Hon. I. W. Webster, County Judge Presiding:

And now comes Harvey Durkee and Franklin H. Head, named as executors and filed the will of said deceased and their petition for the proof of the same.

Ordered that the hearing of the proof of said will be heard on Monday, March 21st, 1870, at one o'clock P. M. of said day and that the said order be published in the Kenosha Union for three successive weeks before the day of such hearing.

I. W. WEBSTER,
County Judge.

STATE OF WISCONSIN, }
Kenosha County, } ss:

BE IT REMEMBERED, that on the 15th day of April,

A. D. 1870, at the City of Kenosha in said County, pursuant to notice, duly published before me I. W. Webster, Judge of the County Court of said County, personally appeared J. J. Pettit & Mark Dresser the subscribing witnesses to the last will and testament of Charles Durkee late of Kenosha county deceased, and the said Pettit & Dresser being duly sworn on oath, declared that the annexed instrument was on the day of the date thereof, to wit, the 12th day of February A. D. 1869, at Kenosha City, in the County of Kenosha, signed by the said Charles Durkee that the said Charles Durkee then and there acknowledged, published and declared said instrument to be his last will and testament, in the presence of the said J. J. Pettit & Mark Dresser the subscribing witnesses thereto; that the said subscribing witnesses did then and there, in the presence of said Charles Durkee severally subscribe said instrument as witnesses thereto; and that at the time of the execution and publishing of said instrument as aforesaid, the said Charles Durkee was of sound disposing mind, memory and understanding, of full age and under no restraint, to the best of the said J. J. Pettit's and Mark Dresser's knowledge and belief; whereupon said instrument was allowed and admitted to probate as and for the last will and testament of the said Charles Durkee deceased.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the County Court of said County, at Kenosha City in said County, this 15th day of April A. D. 1870.

[SEAL.]

I. W. WEBSTER,

County Judge.

STATE OF WISCONSIN, KENOSHA COUNTY COURT
IN PROBATE.

In the Matter of the Last
Will and Testament of
Charles Durkee, deceased. } Kenosha County, ss.

Be it remembered that on this 15th day of April A. D. 1870, at the Office of the Court of Probate, in the City and County of Kenosha, at 10 o'clock A. M., came on to be heard before the Hon. I. W. Webster, County Judge, presiding in the said County Court, sitting as a Court of Probate, the matter of proving an instrument in writing purporting to be the last Will and Testament, signed and executed by said Charles Durkee, late of the City of Kenosha, in said County, bearing date the 12th day of February, A. D. 1869, and purporting to be attested by J. J. Pettit and Mark Dresser, of Kenosha County, as witnesses thereto. In which instrument Harvey Durkee & F. H. Head, of Kenosha County, are named as the Executors thereof. Due notice having been given of the time and place of such hearing, and Harvey Durkee appearing and presenting said instrument in writing, and it now here appearing to this Court from the evidence of J. J. Pettit & Mark Dresser said subscribing witnesses, taken in open Court, and the proofs and petition on file in the premises in this matter, and this Court therefrom finds the facts to be as follows, to-wit: That said Charles Durkee died in the month of January, A. D. 1870. That soon after his decease said Instrument in writing was delivered into this Court by the persons named therein as Executors, and that this Court, on the petition of said last named persons, duly filed, did on the 24th day of January, A. D. 1870, by its order appoint the 21st day of March, A. D. 1870 at one o'clock in the afternoon, at the Probate office, in

the City of Kenosha, for hearing the proofs of said instrument, and that all concerned might then and there appear and contest the Probate of the same as the last Will and Testament of said deceased. And this Court then and there further ordered that public notice thereof be given by publication of said order in the Kenosha Union, a weekly newspaper printed in said City of Kenosha, and State of Wisconsin, for three weeks successively, previous to the time appointed last aforesaid. That at the time last aforesaid, on motion and cause shown, the hearing aforesaid was duly adjourned to the 22d day of March, 1870, at one o'clock in the afternoon, at the same place. That at the time and place last mentioned the hearing of the said matter was for cause shown continued to the 15th day of April, 1870, at ten o'clock in the forenoon. That at the time and place last aforesaid for said hearing, it further appeared to this Court, on due proofs taken and on file with its records, that pursuant to its order, public notice of the time and place of this hearing had been given by publishing said order as ordered by this Court in the Kenosha Union a newspaper printed and published weekly in Kenosha City aforesaid for three weeks successively, previous to the said time first appointed for said hearing, and after hearing the proofs and testimony of said J. J. Pettit and Mark Dresser said subscribing witnesses, this Court finds therefrom the following facts, to wit: That said Charles Durkee signed and executed the said instrument in writing freely and voluntarily with his own proper hand on the 12th day of February A. D. 1869. That said Charles Durkee at that time was of full age, to wit: about the age of Sixty-seven and of sound mind. That he signed the same in the presence of both of said subscribing witnesses thereto, and then and there published and declared said instrument to be his last will and testament and then and there requested said J. J. Pettit and Mark Dresser to attest his execution thereof,

by signing their names thereto as witnesses, which they then and there did so sign the same in the presence of said Charles Durkee and of each other. And this Court further finds that the Real and Personal Property and Estate of the said Charles Durkee, at the time of his decease, amounted to about the sum of fifty thousand dollars or less in value.

Wherefore it is by this Court now here considered ordered, adjudged and decreed, that the said Instrument in writing is duly proved, according to the laws and customs of this State, and the same is allowed and adjudged to be, and is the last will and testament of Charles Durkee, deceased, and the same is hereby established, proved, and admitted to probate as the last will and testament of him the said Charles Durkee, deceased. And it is further considered, adjudged, and decreed that when the said Charles Durkee subscribed his name thereto, and published and declared the same to be his last Will and Testament, he was of full age and sound mind, and capable of making said Will in writing; and it is further considered and adjudged that said instrument is duly executed and witnessed as a Will. And it is further ordered that Letters Testamentary hereon be granted and issued to Harvey Durkee & F. H. Head, residents of the City and County of Kenosha, in said State, in the form, force and effect of Letters Testamentary as by law prescribed in such cases. And it is further ordered that a certificate of this proof of said will be endorsed on said will or annexed thereto, as by law required.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of the County Court of said County, and the proper United States Revenue stamp and canceled the same at Kenosha city in said County this 15th day of April A. D. 1870.

(L. S.)

I. W. WEBSTER,

County Judge in and for the County of Kenosha.

STATE OF WISCONSIN, }
Kenosha County, } ss:

The State of Wisconsin, to Harvey Durkee & Franklin H. Head, of Kenosha County, Greeting:

Whereas Charles Durkee, late of the Kenosha City in the County of Kenosha and State of Wisconsin, lately died, having first made and published his last will and testament, and therein and thereby appointed Harvey Durkee and Franklin H. Head Executors of the said will. And whereas, on the fifteenth day of April A. D. 1870, at the Probate Office, in the City of Kenosha, in our said County of Kenosha, before our County Court in and for said County, the said last will and the testament of the said Charles Durkee, deceased, was proved and is now approved by us in our said County Court: And whereas, the said deceased had whilst living, and at the time of his death, goods, chattels, rights, credits, or estates within the State, whereby the proving and registering of the will, and the ordering and granting administration of all and singular, the said goods, chattels, rights, credits, or estates within the State, whereby the proving and registering of the will, and the ordering and granting administration of all and singular, the said goods, chattels, rights, credits and estate, and also the auditing, allowing and finally discharging the account whereof doth, in virtue of our statutes in such case made and provided, belong and appertain to our said County Court. And whereas, Harvey Durkee & Franklin H. Head, executors named and appointed in and by said last will and testament has given bond as required by law, for the faithful execution of said trust.

Therefore, our said County Court, by our authority and in our name, has granted and hereby does grant the administration of all and singular, the goods, chattels, rights, credits and

estate of the said deceased, and in any way concerning his said last will and testament unto Harvey Durkee & Franklin H. Head, Executors, in the said will named. And our said County Court, does hereby in our name and by our authority grant unto you full power and authority to administer, and faithfully to dispose of according to law, all and singular the goods, chattels, rights, credits and estate which to the said deceased whilst living and at the time of his death, did belong; also to ask, demand, collect, recover and receive all and singular, the debts, claims, demands, rights and credits, which to the said deceased whilst living, and at the time of his death, did belong; and to pay the debts which the said deceased did owe, or which he in the law stood bound, so far as such goods, chattels, rights, credits and estate will, under the order or decree of our said County Court, enable you to do. And you are hereby required to make or cause to be made, a true and perfect inventory of the real estate, and of all the goods, chattels, rights and credits, which were of the said deceased at the time of his death, and which has or shall come to your possession or knowledge; to cause the estate and effects comprised in the inventory to be exhibited to and appraised by the persons lawfully appointed and sworn for that purpose; to make or cause to be made a separate and distinct inventory and appraisement of all the household furniture and other personal property belonging to the estate of the said deceased, allowed to the widow of the said deceased pursuant to the provisions of the statute in such case made and provided; to return the same inventories and appraisements under your hands and the hands of those by whom such appraisements shall be made, to our said County Court within three months from the date of these presents; and further to render a just and true account of your administration in the premises, to our said County Court, within one year from the time when you shall receive these letters, unless

otherwise ordered by our said Court; to render all such further accounts in the premises as shall be required by our said Court, and to observe, obey and perform all such orders and decrees as shall be by our said Court lawfully made and entered in the premises.

In testimony whereof, we have caused the seal of our said County Court to be hereunto affixed.

Witness, I. W. Webster, Judge of our said Court, at the City of Kenosha in our said County of Kenosha on the 19th day of April A. D., 1870.

(L. S.)

I. W. WEBSTER,
County Judge.

STATE OF WISCONSIN, KENOSHA COUNTY COURT
IN PROBATE.

In the matter of the Estate
of
Charles Durkee, deceased.

At a regular Term of the County Court in and for the County of Kenosha, in said State, at the County Court Room, in the City of Kenosha, on the first Tuesday of March, 1882, to wit March 21st A. D. 1882.

Present: The Hon. Edward Martin, County Judge, presiding.

The issue heretofore formed under the order of this court on January 4th, A. D. 1882, to try the validity of the sale and transfer dated May 23, 1871, from Caroline Durkee to Harvey Durkee of certain of her property and interests part of the estate of the late Charles Durkee deceased and the application of Franklin H. Head, executor of the estate of Charles Durkee,

deceased, for the settlement and allowance of his final account and the assignment of the residue of said estate to such other person or persons as may be by law entitled thereto coming on to be heard at this term and it appearing that due notice of the time and place of hearing has been duly given as required by law and by the order of the court made herein on the 18th day of August, A. D. 1881, and such matters having stood continued from time to time until this Term and Joseph V. Quarles, Esq., now appearing of counsel for the said executor and John T. Fitch now appearing of counsel for the said Caroline Durkee and Harvey Durkee now appearing in his own person and after hearing the allegations, proofs of the parties and all the evidence and upon the examination of the accounts and vouchers of said executor the court finds that before and at the time of his death the said Charles Durkee, deceased, was a resident of the City and County of Kenosha, in the State of Wisconsin, that he departed this life on the 14th day of January A. D. 1870, testate as to part of his estate only and without issue leaving the said Caroline Durkee his widow relict Heir at Law & next of Kin him surviving.

That By the Decree of the Circuit Court of Kenosha County made and entered on the 23d day of May, 1871, it was (among other things) found and determined that the bequest by the said Charles Durkee deceased to the Executors named in his last Will and Testament of his real and personal estate in trust for the uses & purposes therein set forth is valid & effectual except as to the fifth trust apparently sought to be created by said Will in the fifth subdivision thereof which trust was thereby adjudged to be inoperative & void and it was also adjudged that the estate of said Charles Durkee deceased by reason of the invalidity of said fifth trust or subdivision descend to the said Caroline Durkee as therein mentioned

that said Franklin H. Head is the sole executor of the last Will and Testament of said Charles Durkee deceased. That on or about the 26th day of May A. D. 1870 said Harvey Durkee who was named in said will of said Charles Durkee as one of the executors thereof and who had qualified as such Executor but who had not intermeddled with said estate as such executor except to execute certain instruments as a mere matter of form did renounce as such executor and resign his said Trust and was on said 26th day of May A. D. 1870 duly discharged by the order of this Court and his authority as such executor was then & there extinguished.

That the said Caroline Durkee had at all times full and complete knowledge of the condition & value of said estate and of her interest therein and had all the knowledge and information in relation to said matters which said executor had or could obtain.

That neither the said executor nor the said Harvey Durkee ever used or made any fraudulent devices or representations to or toward said Caroline Durkee or any concealment whatever as to any matter or any shifts or devices of any kind

that said Caroline Durkee being then fully informed in the premises did freely voluntarily and at her own instance make the sale and transfer & power of attorney in said issue mentioned for and receive therefor a full and adequate consideration.

That thereupon said Harvey Durkee presented said deed from said Caroline Durkee to said Franklin H. Head as such Executor as aforesaid and that he said Executor acted thereon in good faith and paid all amounts therein named which came to his hands to said Harvey Durkee and took his acquittances therefor.

That said Franklin H. Head the Executor has fully administered said estate of said Charles Durkee deceased except as

to \$250.00 which he now holds subject to the order of this court.

It is therefore adjudged decreed and declared that the said Charles Durkee at the time of his death was a resident of the State of Wisconsin and that the said Caroline Durkee was his heir at law and as such was entitled to all the residue of his estate after payment of the Funeral & Testamentary expences the charges of the last sickness & the legacies mentioned in the first four sections of his said Will.

That the sale and transfer from said Caroline Durkee to said Harvey Durkee is a good valid and subsisting Deed.

That the said Caroline Durkee is estopped to deny the validity thereof or any part thereof and that her averment that such Deed is invalid is a stale claim which ought not now to be asserted heard or allowed.

That the said Franklin H. Head executor as aforesaid has fully administered the said estate of said Charles Durkee deceased and has fully paid and discharged all the Funeral and Testamentary expences and the charges of the last sickness and the bequests and legacies and observed all the directions in said Will contained except the bequest under the fifth clause of said Will which was so decreed by the Circuit Court of Kenosha County to be inoperative as aforesaid.

That he has sold and fully accounted for and paid over according to the Terms of said Transfer of May 23^c 1871 all the proceeds of sale of the 20 acres of land near San Diego California therein mentioned.

That the amount properly chargeable to said Executor is the sum of.....\$56,947.00

That the amount properly credited to him is the
sum of..... 56,697.00

Balance due from him to the Estate Subject to
charges \$250.00

Wherefore it is ordered and adjudged that the Homestead of said Charles Durkee deceased in the City and County of Kenosha in the State of Wisconsin and all the household furniture & personal property therein be and the same is hereby assigned to the said Caroline Durkee her heirs executors administrators and assigns for her and their own absolute use and benefit.

That all the other property rights, credits and assets belonging to said estate which are not included in said Inventory filed as aforesaid June 16th A. D. 1870 be and the same are hereby assigned to the said Caroline Durkee her executors administrators & assigns for her and their own absolute benefit.

That the said Balance or sum of \$250.00 be and the same is hereby assigned to the said Harvey Durkee his executors administrators & assigns less the cost, charges, attorney Fees, expences, & commissions, for the settlement of this estate except such as already charged in said account and that upon filing his receipt therefor or for the balance thereof as aforesaid the said Franklin H. Head Executor as aforesaid stand discharged from his trust.

Dated 21st March A D 1882

By the Court

EDWARD MARTIN,

County Judge.

KENOSHA COUNTY COURT. IN PROBATE.

In the matter of the last will and testament of Charles Durkee,
Deceased.

Petition for Administration De Bonis Non Cum Testamento
Annexo.

The petition of Harriet L. Blaisdell and Caroline C. Johnson, respectfully represents, that Charles Durkee, deceased, departed this life on the 14th day of January, A. D. 1870, in the Territory of Utah, being at said time a legal resident of the City and County of Kenosha, in the State of Wisconsin. That said Charles Durkee died testate as to a part of his property only.

That thereafter such proceedings were had in the County Court of Kenosha County, that the last will and testament of said Charles Durkee, deceased, was duly proved and admitted to probate, and Harvey Durkee and Franklin H. Head therein named as executors and trustees were duly appointed by this Court as executors, and qualified and acted as such.

That thereafter said Harvey Durkee duly resigned his trust as such executor and trustee, which resignation was accepted and agreed by the Court; that said Franklin H. Head proceeded with the administration of said estate, and such proceedings were had; that on the 21st day of March A. D. 1882, the final account of said Franklin H. Head as executor, was allowed, and he was discharged from his trust. That said Franklin H. Head is not now a resident of the State of Wisconsin.

Said petitioners further represent that said Charles Durkee at the time of his decease, was the owner of real estate in said territory of Utah, and other places, and of certain personal property, of stocks and bonds of the value of One Thousand (1000) Dollars, and upwards to an amount unknown to your petitioners. That said lands, stocks and bonds did not come to the possession of the executors, and have never been administered upon.

That said deceased had no children, but left him surviving his widow, Caroline Durkee, who is since deceased, leaving her surviving as her sole and only heir at law one sister, Angeline Walker, who resides, as your petitioners are informed and believe, in the City of New York, in the State of New York.

That said Charles Durkee also left him surviving three brothers, to-wit: Harvey Durkee, Paoli Durkee and Harrison Durkee, and the children of a deceased brother, Henry Durkee, to-wit: Caroline C. Johnson, and Harriet L. Blaisdell, your petitioners. Caroline Johnson residing at Fayette, Ohio, and Harriet Blaisdell residing at Champaign, Illinois, William H. Durkee who is since deceased without issue, and John Durkee also deceased, whose heirs are unknown to your petitioners, also children of Susan Bordman, a deceased sister, to-wit: George W. Bordman, since deceased, whose heirs are unknown to your petitioners, Charles L. Bordman and Jessie Monoghan.

That said Harvey Durkee, Paoli Durkee and Harrison Durkee are all since deceased.

That your petitioners are unable to state more particularly the heirs of said deceased, or other persons interested, and are unable to inform the Court as to whether any parties interested in said estate are minors, or otherwise incapable of prosecuting or defending for her or himself, or is under guardianship.

That as your petitioners are informed and believe, no person interested in said estate now reside within the County of Kenosha, and State of Wisconsin.

Wherefore your petitioners pray that administration of the estate of said Charles Durkee, deceased, not already administered, be granted to Henry J. Hastings, Public Administrator

for said County of Kenosha, State of Wisconsin, with the will of said Charles Durkee, deceased, hereto annexed.

Dated at Kenosha, Wisconsin, this 20th day of September, A. D. 1911.

HARRIET L. BLAISDELL.

CAROLINE C. JOHNSON.

By JOHN C. STONER,

Their Attorney in fact.

STATE OF WISCONSIN, }
Kenosha County, } ss:

John C. Stoner being first duly sworn on oath, says that he is a resident of the City of Washington, in the District of Columbia; that he is one of the persons named as donees in the power of attorney executed by Caroline Johnson and Harriet Blaisdell to him and others; authorizing him to appear and act for them; that he makes this petition in their name, and under their authority, and is duly authorized thereto; that he has heard read the said petition, and knows the contents thereof; and that the same is true to his own knowledge, except as to matters therein stated upon information and belief, and as to such matters, he believes the same to be true. That his belief is based upon the records in the office of the County Court of said Kenosha County, and the files in the estate of Charles Durkee and Caroline Durkee, deceased.

JOHN C. STONER.

Subscribed and sworn to before me this 20th day of September, A. D. 1911.

HENRY J. HASTINGS,

Notary Public,

Kenosha County, Wisconsin.

KENOSHA COUNTY COURT. IN PROBATE.

At a term of the County Court held in probate in and for the County of Kenosha, at the office of the County Court in the City of Kenosha, and State of Wisconsin, on the 22nd day of September, A. D. 1911, at 10.00 o'clock A. M.

Present the Hon. George W. Taylor, County Judge.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF CHARLES DURKEE, DECEASED.	}	ORDER FOR HEARING.
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On reading and filing the petition of Harriet L. Blaisdell and Caroline C. Johnson, representing among other things, that Charles Durkee, late of the City of Kenosha, in said County, deceased, on the 14th day of January, A. D. 1870, in the Territory of Utah, died testate as to a part of his property only, and intestate as to the residue thereof; that the last will and testament of said deceased was duly proved and admitted to probate in this Court, and that on the 21st day of March, A. D. 1882, the final account of Franklin H. Head, Executor, was allowed, and he was discharged from his trust; that said Franklin H. Head is not now a resident of the State of Wisconsin; that said Charles Durkee at the time of his decease was the owner of real estate in said territory of Utah and other places, and of personal property, which said lands and personal property did not come to the possession of the executor, and have never been administered upon; that said Charles Durkee left no widow or lineal descendants; that the petitioners are nieces of said deceased, the children of a deceased brother, and praying that administration of said estate, not already administered, with the will annexed, be granted to Henry J. Hastings, Public Administrator for said County of Kenosha.

IT IS ORDERED,

That said petition be heard before this Court at a special

term thereof, to be held at its office in the City of Kenosha, in said County, on the 4th Tuesday, being the 24th day October, A. D. 1911, at 10.00^o o'clock A. M. or as soon thereafter as counsel can be heard.

IT IS FURTHER ORDERED, that notice thereof be given to the heirs of said deceased, and to all persons interested, by publishing a notice of this order for three successive weeks prior to said day of hearing, in the Kenosha Evening News, a daily newspaper published in the City of Kenosha, in said County, at least once in each week.

Dated at Kenosha, Wisconsin, this 22nd day of September, A. D. 1911.

GEORGE W. TAYLOR,
County Judge.

KENOSHA COUNTY COURT. IN PROBATE.

STATE OF WISCONSIN, }
Kenosha County, } *ss:*

At a County Court held in Probate in and for the County of Kenosha, in said State, at the office of the County Court, in the City of Kenosha, on the 19th day of December A. D. 1911, at ten o'clock A. M.

Present: The Hon. Geo. W. Taylor, County Judge.

In the Matter of the Last Will and Testament of Charles Durkee, Deceased.

Pursuant to an order of this Court made in said matter on the 22nd day of September A. D. 1911, the petition of Harriet L. Blaisdell and Caroline C. Johnson was this day heard and considered; and on reading and filing the affidavit of Samuel Simmons showing that the notice required to be given

by said order has been duly published as ordered, and it appearing that the said Charles Durkee Deceased left Real and personal Estate which has never been administered upon, and his estate was closed and executors discharged, leaving said estate unsettled, and the sole surviving executor is not a resident of the State of Wisconsin and that the prayer of said petitioner ought to be granted, and the Court having overruled the objections of J. A. Kuykendall and James Cavanagh, it is ordered that the said Henry J. Hastings, named in said Petition give bond to the Judge of this Court, in the sum of Two Thousand Dollars, in pursuance of the statute in such case made and provided, and that letters of Administration de bonis non cum testamento annexo issue accordingly.

Dated this 19th day of December A. D. 1911.

By the Court,

GEO. W. TAYLOR,

County Judge.

KENOSHA COUNTY COURT. IN PROBATE.

STATE OF WISCONSIN, }
County of Kenosha. } ss.

The State of Wisconsin to all to whom these presents shall come and especially to Henry J. Hastings, of the said County, Greeting:

Know ye that, whereas Charles Durkee, late of the City of Kenosha, in said County, died testate, and being at the time of his death a legal resident of said County, by means whereof the proving and allowing of his Last Will and Testament, and granting Administration of all and singular, the goods, chattels, rights, credits and estate whereof he died possessed, and also auditing, allowing and finally discharging the account thereof,

was and is within the jurisdiction of our county court of said county; and,

Whereas, the Last Will and Testament of the said Charles Durkee, deceased, was approved, allowed and admitted to probate in said county court, and said estate duly administered therein, and the accounts of the executors thereof were allowed and they were discharged from their trust, and the sole surviving executor is not now a resident of this State, and it appears that certain assets of said deceased never came into the hands of the executors of his Will, and have never been administered upon, and Henry J. Hastings being duly appointed as Administrator de bonis non cum testamento annexo has given bond as such Administrator as required by law, which has been approved and filed in said court;

We therefore, reposing full confidence in your integrity and ability, have granted and by these presents do grant the administration of all and singular the goods, chattels, rights, credits and estate of said deceased not already administered, in any way concerning his said Will, unto you, the said Henry J. Hastings as Administrator aforesaid. Hereby authorizing and empowering you to take and have possession of all the real and personal estate of said deceased not already administered, and to receive the rents, issues and profits thereof until said estate shall have been settled, or until delivered over by order of said court to the devisees or heirs of said deceased; and to demand, collect, recover and receive all and singular the debts, claims, demands, rights and choses in action which to the said deceased while living and at the time of his death did belong.

And requiring you to keep in good tenantable repair all houses, buildings and fences on said real estate which may and shall be under your control; and to make and return into the said County Court, within three months, a true inventory of

the real estate and of all the goods, chattels, rights and credits of said deceased which shall come to your possession and knowledge; to administer, according to law, and the will of said testator, all the goods, chattels, rights, credits and estate of said deceased which shall at any time come to your possession, or to the possession of any other person for you, and out of the same to pay and discharge all debts, legacies and charges chargeable on the same, or such dividends thereon as shall be ordered and adjudged by said court; to render a just and true account of your administration to said court within one year, and at any other time when required by said court, and to perform all orders and judgments of said court by you to be performed in the premises.

IN TESTIMONY WHEREOF, we have caused the seal of our said County Court to be hereunto affixed.

WITNESS the Hon. George W. Taylor, Judge of said Court, at the City of Kenosha, in said County, this 19th day of December, A. D. 1911.

(SEAL)

GEO. W. TAYLOR,
County Judge.

KENOSHA COUNTY COURT: IN PROBATE.

IN THE MATTER OF THE LAST WILL
AND TESTAMENT OF CHARLES } PETITION.
DURKEE, DECEASED.

The petition of Henry J. Hastings, of said county, respectfully represents that he is the administrator *de bonis non cum testamento annexo* of the estate of Charles Durkee, deceased, duly qualified and acting as such; that he knows of no assets belonging to said estate except from information derived from J. J. Souder, whose affidavit is presented herewith; that with-

out the assistance of Mr. Souder he would be utterly unable to discover any assets belonging to said estate. That as petitioner has been informed and believes J. A. Kuykendall, who has been appointed by the courts of Utah as administrator of said estate, has expended large sums of money and many years of time in the effort to collect the assets of said estate, but without result. That he believes it would be for the best interest of the heirs of said estate to enter into a contract with Mr. Souder for the discovery and collection of the alleged claims of said estate, upon some equitable basis.

Your petitioner would therefore pray that this court enter its order, authorizing and empowering your petitioner, as administrator of the estate of said deceased, to enter into a contract with Mr. Souder upon some equitable basis; he to be allowed a contingent fee or percentage upon all monies and properties which he may be able to collect; it being understood that such percentage shall cover all fees, costs and expenses and that your petitioner and the estate of said deceased be relieved from any and all liability therefrom.

Dated at Kenosha, Wisconsin, this 21st day of December, A. D. 1911.

HENRY J. HASTINGS.

STATE OF WISCONSIN, }
County of Kenosha. } ss.

Henry J. Hastings being first duly sworn on oath, says that he is the Administrator *de bonis non cum testamento annexo* of the estate of said Charles Durkee, deceased, and the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof; and that the same is true to his own knowledge except as to matters therein stated

upon information and belief, and as to those matters he believes said petition to be true.

HENRY J. HASTINGS.

Subscribed and sworn to before me this 21st day of December, A. D. 1911.

JOSEPH R. CLARKSON,
Notary Public.
Kenosha County, Wisconsin.

KENOSHA COUNTY COURT: IN PROBATE.

IN THE MATTER OF THE LAST WILL)
AND TESTAMENT OF CHARLES)
DURKEE, DECEASED.)

At a regular term of said County Court for Kenosha County, State of Wisconsin, held at the Court House in the City of Kenosha, in said County, beginning on the first Tuesday of December, A. D. 1911, and on the 23rd day of December, A. D. 1911, during said term.

Present the HON. GEORGE W. TAYLOR,
County Judge, Presiding.

On reading and filing the petition of Henry J. Hastings, Administrator *de bonis non cum testamento annexo* of the estate of Charles Durkee, formerly of the City of Kenosha, in said county, deceased, and the accompanying affidavit of Jacob J. Souder, from which it appears that in order to uncover the assets of said deceased, consisting of claims of long standing, and of very doubtful nature, it will require large expense, and the employment of special counsel and agents in different cities; that in order to expedite the settlement of such long

standing claims, and avoid extended litigation in many different courts, it may become necessary or advisable to make compromises at a considerable apparent sacrifice; and that said Jacob J. Souder has undertaken to secure the employment of such special agents, the settlement of such claims, and the discovery of such assets, saving said administrator all other expense and liability.

IT IS ORDERED, that Henry J. Hastings, administrator as aforesaid, be, and he is hereby authorized and empowered to compromise any claim or choses in action which may come into his hands, upon the best basis he can obtain, at no greater loss than fifty per cent; to employ such counsel or special agents as he may find necessary, and to allow such special agents or counsel to retain fifty per cent of such face value, if paid in full; and he is further authorized and empowered in addition thereto to allow and pay to said Jacob J. Souder fifteen per cent of the amount of such claims as compensation for his services and expenses, in negotiating settlements, and securing services of special agents and counsel; it being understood that said Jacob J. Souder and any persons employed by him shall have no power to incur any expense which shall be a charge against said administrator, or against said estate, other than such contingent fees.

By the Court,

GEO. W. TAYLOR,
County Judge.

CHAPTER 7

Treasury Department, Dec. 8, 1879.

Hon. Samuel J. Randall, Speaker, House of Representatives.

Sir: I have the honor to call attention to the recommendation made to Congress, in my letter of Feb. 21, 1879 (copy inclosed), upon the subject of the investment of the sinking fund of the Union and Central Pacific Railroad Companies, as contemplated in the Act of May 7, 1878 (20 Stat., 58), and to enclose herewith a copy of a letter from the Treasurer of the United States of the 6th instant, upon the same subject.

No action having been taken by Congress toward a modification of the law, in pursuance of my recommendation of last year, I have again to recommend the enactment of a statute which will give the Secretary of the Treasury authority to invest such amounts as may be from time to time payable to those funds in the first mortgage bonds of said companies, or in any interest-bearing bonds of the United States.

The following draft of a joint resolution is submitted for the consideration and action of Congress:

JOINT RESOLUTION authorizing the Secretary of the Treasury to invest the sinking funds of the Union and Central Pacific Railroad Companies in any United States bonds, or in the first-mortgage bonds of said companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized to invest the sinking funds established under the third section of the Act of May 7, 1878, entitled "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific

Reports of the
Attorney General,
Secretary of Interior
and
Commissioner of Railways.

Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the Act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act," in any interest-bearing bonds of the United States, or, respectively, in the first mortgage thirty-year bonds of the Union Pacific Railroad Company, and of the Central Pacific Railroad Company, authorized by section 10 of the Act of Congress of July 2, 1864, Chapter 216, and Section 1, of the Act of Congress of March 3, 1865, Chapter 88.

Very respectfully,

JOHN SHERMAN,

Secretary.

Under the act of July 2, 1864, the companies were authorized to issue their own bonds to an equal amount, which should be prior lien to that of the Government, and the Union Pacific Railroad Company accordingly issued its bonds, bearing interest at 6 per cent per annum, as follows:

TABLE No. 8.—Statement for 1895 showing the amount of bonds issued to the several Pacific railroad companies and to whom delivered, with the dates of issue, maturity, beginning of interest, and the number of miles aided.

CENTRAL PACIFIC RAILROAD COMPANY.

Date of issue.	Amount.	Date on which interest begins.	Date of maturity.	To whom delivered.	Number of miles aided.
May 12, 1865.	\$1,258,000	Jan. 16, 1865	Jan. 16, 1895	Collis P. Huntington	31
Nov. 8, 1865...	384,000	Aug. 14, 1865	do. do.	do.	
Nov. 9, 1865...	256,000	Oct. 16, 1865	do. do.	do.	23
Dec. 11, 1865...	464,000	Nov. 29, 1865	do. do.	do.	20
March 6, 1866...	640,000	Mar. 6, 1866	Jan. 1, 1896	do.	20
July 10, 1866...	640,000	July 10, 1866	do. do.	do.	
Oct. 31, 1866...	320,000	Oct. 29, 1866	do. do.	do.	
Jan. 15, 1867...	640,000	Jan. 14, 1867	Jan. 1, 1897	do.	20
Oct. 25, 1867...	320,000	Oct. 25, 1867	do. do.	do.	
Dec. 12, 1867...	1,152,000	Dec. 11, 1867	do. do.	do.	24
June 10, 1868...	946,000	June, 9, 1868	Jan. 1, 1898	do.	
July 11, 1868...	320,000	July 10, 1868	do. do.	do.	20
August 5, 1868...	640,000	Aug. 4, 1868	do. do.	do.	20
August 14, 1868...	1,184,000	Aug. 13, 1868	do. do.	do.	37
Sept. 12, 1868...	1,280,000	Sept. 11, 1868	do. do.	do.	40
Sept. 21, 1868...	1,120,000	Sept. 19, 1868	do. do.	do.	35
Oct. 13, 1868...	1,280,000	Oct. 12, 1868	do. do.	do.	40
Oct 28, 1868...	640,000	Oct. 26, 1868	do. do.	do.	20
Nov. 5, 1868...	640,000	Nov. 3, 1868	do. do.	do.	20
Nov. 12, 1868...	640,000	Nov. 11, 1868	do. do.	do.	20
Dec. 5, 1868...	640,000	Dec. 5, 1868	do. do.	do.	20
Dec. 7, 1868...	640,000	Dec. 7, 1868	do. do.	do.	20
Dec. 30, 1868...	640,000	Dec. 29, 1868	do. do.	do.	20
Jan. 2, 1872...	4,120	Nov. 28, 1868	do. do.	do.	20
Jan. 15, 1869...	640,000	Jan. 13, 1869	Jan. 1, 1899	do.	20
Jan. 29, 1869...	640,000	Jan. 28, 1869	do. do.	do.	20
Feb. 17, 1869...	640,000	Feb. 17 1869	do. do.	do.	20
March 2, 1869...	1,066,000	do. do.	do. do.	do.	20
Do	1,333,000	Mar. 2, 1869	do. do.	do.	20
May 28, 1869...	1,786,000	May 27, 1869	do. do.	do.	20
July 15, 1869...	1,314,000	do. do.	do. do.	do.	100
July 16, 1869...	268,000	July 15, 1869	do. do.	do.	20.30
Dec. 31, 1869...	1,510,000	July 16, 1869	do. do.	do.	47.20
Total	25,885,120				737.50

UNION PACIFIC RAILROAD COMPANY.

Feb. 1, 1866....	\$640,000	Feb. 1, 1866	Feb. 1, 1896	T. C. Durant.....	40
May 7, 1866....	400,000	May 7, 1866	....do.....	B. F. Bunker.....	25
June 26, 1866..	640,000	June 26, 1866	....do.....	....do.....	40
July 13, 1866..	320,000	July 13, 1866	....do.....	....do.....	20
August 9, 1866.	560,000	Aug. 9, 1866	....do.....	....do.....	35
Sept. 11, 1866..	720,000	Sept. 11, 1866	....do.....	....do.....	45
Oct. 15, 1866...	560,000	Oct. 13, 1866	....do.....	A. G. Lathrop.....	35
Nov. 8, 1866...	480,000	Nov. 7, 1866	....do.....	....do.....	30
Jan. 9, 1867...	560,000	Jan. 8, 1867	Jan. 1, 1897	B. F. Bunker.....	35
June 11, 1867...	640,000	June 10, 1867	....do.....	....do.....	40
July 6, 1867....	640,000	July 6, 1867	....do.....	....do.....	40
August 21, 1867.	560,000	Aug. 29, 1867	....do.....	....do.....	35
Oct. 2, 1867....	560,000	Oct. 2, 1867	....do.....	....do.....	35
Nov. 5, 1867....	560,000	Nov. 5, 1867	....do.....	....do.....	35
Dec. 13, 1867...	320,000	Dec. 13, 1867	....do.....	E. H. Rollins.....	20
Jan. 28, 1868...	957,000	Jan. 27, 1868	Jan. 1, 1898	....do.....	30
May 18, 1868...	960,000	May 16, 1868	....do.....	....do.....	20
May 19, 1868...	960,000	May 18, 1868	....do.....	....do.....	20
June 12, 1868..	960,000	June 12, 1868	....do.....	....do.....	20
June 17, 1868..	960,000	June 18, 1868	....do.....	....do.....	20
July 23, 1868...	960,000	July 22, 1868	....do.....	....do.....	20
July 25, 1868...	1,841,000	July 24, 1868	....do.....	....do.....	40
August 12, 1868.	640,000	Aug. 11, 1868	....do.....	....do.....	20
August 29, 1868.	640,000	Aug. 28, 1868	....do.....	....do.....	20
Sept. 7, 1868...	1,280,000	Sept. 7, 1868	....do.....	....do.....	40
Sept. 23, 1868...	640,000	Sept. 23, 1868	....do.....	....do.....	20
Oct. 22, 1868...	640,000	Oct. 21, 1868	....do.....	....do.....	20
Nov. 20, 1868...	640,000	Nov. 19, 1868	....do.....	....do.....	20
Dec. 7, 1868...	1,280,000	Dec. 7, 1868	....do.....	....do.....	40
Dec. 15, 1868...	640,000	Dec. 14, 1868	....do.....	....do.....	20
Dec. 17, 1868...	640,000	Dec. 16, 1868	....do.....	....do.....	20
Dec. 24, 1868...	640,000	Dec. 23, 1868	....do.....	....do.....	20
Do	640,000	Dec. 24, 1868	....do.....	....do.....	
July 15, 1870...	1,512	Nov. 21, 1868	....do.....	J. M. S. Williams...	20
Jan. 29, 1869...	640,000	Jan. 29, 1869	Jan. 1, 1899	John J. Cisco.....	
Feb. 10, 1869...	1,280,000	Feb. 10, 1869	....do.....	Union Pacific R.R.Co.	20
July 22, 1869...	640,000	July 16, 1869	....do.....	Jno. M. S. Williams.	40
Nov. 10, 1869...	437,000	....do.....	....do.....	E. H. Rollins,\$114,000	20
July 14, 1870...	160,000	....do.....	....do.....	J.M.S.Williams,\$323,000	13.68
Total	27,236,512	....do.....	....do.....	J.. M. S. Williams..	5
					1,038.68

TABLE No. 8.—Statement for 1895 showing the amount of bonds issued to the several Pacific road companies and to whom delivered, etc.—Continued.

KANSAS PACIFIC RAILWAY COMPANY, LATE UNION PACIFIC RAILWAY COMPANY, EASTERN DIVISION.

Date of issue.	Amount.	Date on which interest begins.	Date of maturity.	To whom delivered.	of miles aided
					Number
Nov. 1, 1865...	\$640,000	Nov. 1, 1865	Nov. 1, 1895	John D. Perry.....	40
Jan. 1, 1866...	352,000	Jan. 1, 1866	Jan. 1, 1896	W. J. Palmer.....	22
May 8, 1866...	368,000	May 8, 1866	.....do.....	.....do.....	23
July 9, 1866...	320,000	July 9, 1866	.....do.....	.....do.....	20
Oct. 16, 1866...	400,000	Oct. 15, 1866	.....do.....	.....do.....	25
Jan. 23, 1867...	400,000	Jan. 23, 1867	Jan. 1, 1897	.....do.....	25
May 6, 1867...	480,000	May 6, 1867	.....do.....	J. C. Reiff.....	30
June 11, 1867...	400,000	June 10, 1867	.....do.....	Josiah C. Reiff.....	25
Aug. 13, 1867...	384,000	Aug. 13, 1867	.....do.....	J. C. Reiff.....	24
Sept. 20, 1867...	400,000	Sept. 20, 1867	.....do.....	.....do.....	25
Oct. 26, 1867...	416,000	Oct. 26, 1867	.....do.....	.....do.....	26
Dec. 3, 1867...	320,000	Dec. 3, 1867	.....do.....	.....do.....	20
Jan. 14, 1868...	480,000	Jan. 14, 1868	Jan. 1, 1898	.....do.....	30
April 28, 1868...	400,000	April 28, 1868	.....do.....	.....do.....	25
June 6, 1868...	320,000	June 6, 1868	.....do.....	.....do.....	20
Nov. 5, 1868...	223,000	Nov. 2, 1868	.....do.....	.....do.....	13.9425
Total	6,303,000	.....	.....	.....	393.9425

CENTRAL BRANCH UNION PACIFIC RAILROAD COMPANY, LATE ATCHISON AND PIKES PEAK RAILROAD COMPANY, ASSIGNEES OF THE HANNIBAL AND ST. JOSEPH RAILROAD COMPANY.

July 27, 1866...	\$320,000	July 19, 1866	Jan. 1, 1896	S. C. Pomeroy.....	20
Dec. 7, 1866...	320,000	Dec. 6, 1866	.....do.....	E. H. Nichols.....	20
May 2, 1867...	320,000	May 2, 1867	Jan. 1, 1897	.....do.....	20
Dec. 4, 1867...	332,000	Dec. 3, 1867	.....do.....	.....do.....	20
Jan. 21, 1868...	320,000	Jan. 20, 1868	Jan. 1, 1898	.....do.....	20
Total	1,600,000	.....	.....	.....	100

SIoux CITY AND PACIFIC RAILROAD COMPANY.

March 16, 1868.	\$792,000	Mar. 10, 1868	Jan. 1, 1898	J. I. Blair.....	49.50
March 30, 1868.	320,000	Mar. 30, 1868	.....do.....	.....do.....	20
March 3, 1869.	516,320	Mar. 3, 1869	.....do.....	.....do.....	32.27
Total	1,628,320	.....	.....	.....	101.77

WESTERN PACIFIC RAILROAD COMPANY.

Jan. 24, 1867...	\$320,000	Jan. 26, 1867	Jan. 1, 1897	John A. Griswold...	20
Sept. 3, -869...	320,000	Sept. 3, 1869	Jan. 1, 1899	C. P. Huntington...	60
Oct. 29, 1869...	1,008,000	Oct. 28, 1869	.....do.....	Jas. H. Storrs, att'y.	63
Jan. 27, 1870...	322,000	Jan. 22, 1870	.....do.....	C. P. Huntington...	20.18
Jan. 8, 1872...	560	.....do.....	.....do.....	.....do.....	20.18
Total	1,970,560	.....	.....	.....	128.18

RECAPITULATION.

Name of road.	Amount of bonds.	Interest to maturity at 6 per cent.	Total.
Central Pacific.....	\$25,885,120.00	\$45,786,454.67	\$71,671,574.67
Union Pacific.....	27,236,512.00	48,115,835.85	75,352,347.85
Kansas Pacific.....	6,303,000.00	11,188,943.09	17,491,943.09
Central Branch Union Pacific.....	1,600,000.00	2,826,608.26	4,426,608.26
Sioux City and Pacific.....	1,628,320.00	2,880,935.89	4,509,255.89
Western Pacific.....	1,970,560.00	3,426,469.74	5,433,029.74
Aggregate	64,623,512.00	114,261,247.50	178,884,759.50

Under the Act of July 2, 1864, the companies were authorized to issue their own bonds to an equal amount, which should be a prior lien to that of the Government, and the Union Pacific Railroad Company accordingly issued its bonds bearing interest at 6 per cent per annum, as follows:

Date of issue.	Amount.	Date of maturity.
January 1, 1866.....	\$6,475,000	January 1, 1896.
January 1, 1867.....	1,598,000	January 1, 1897.
July 1, 1867.....	1,920,000	July 1, 1897.
January 1, 1868.....	5,999,000	January 1, 1898.
July 1, 1868.....	8,837,000	July 1, 1898.
January 1, 1869.....	2,400,000	January 1, 1899.
Total	27,229,000	

The Kansas Pacific Railway (now the Kansas Division of the Union Pacific Railway Company) was first chartered as the Leavenworth, Pawnee, and Western. The name of the company was changed on June 6, 1863, to Union Pacific Railway Company, Eastern Division, and later to Kansas Pacific Railway Company. Under the act of 1862 United States bonds bearing 6 per cent interest were issued to aid in its construction as follows:

Date of issue.	Amount.	Date on which interest begins.	Date of maturity.	To whom delivered.	Number of miles aided.
Nov. 1, 1865...	\$640,000	Nov. 1, 1865	Nov. 1, 1895	Jno. D. Perry.....	40
Jan. 1, 1866...	352,000	Jan. 1, 1866	Jan. 1, 1896	Wm. J. Palmer.....	22
May 8, 1866...	368,000	May 8, 1866	do.....	do.....	23
July 9, 1866...	320,000	July 9, 1866	do.....	do.....	20
Oct. 16, 1866...	400,000	Oct. 15, 1866	do.....	do.....	25
Jan. 23, 1867...	400,000	Jan. 23, 1867	Jan. 1, 1897	do.....	25
May 6, 1867...	480,000	May 6, 1867	do.....	J. C. Reiff.....	30
June 11, 1867...	400,000	June 10, 1867	do.....	Josiah C. Reiff.....	25
Aug. 13, 1867...	384,000	Aug. 13, 1867	do.....	J. C. Reiff.....	24
Sept. 20, 1867...	400,000	Sept. 20, 1867	do.....	do.....	25
Oct. 26, 1867...	416,000	Oct. 26, 1867	do.....	do.....	26
Dec. 3, 1867...	320,000	Dec. 3, 1867	do.....	do.....	20
Jan. 14, 1868...	480,000	Jan. 14, 1868	Jan. 1, 1898	do.....	30
April 28, 1868...	400,000	April 28, 1868	do.....	do.....	25
June 6, 1868...	320,000	June 6, 1868	do.....	do.....	20
Nov. 5, 1868...	223,000	Nov. 2, 1868	do.....	do.....	13.9425
Total	6,303,000				393.9425

Class.	Trustees.	Interest payable.	Issued and outstanding.	Owned by the company and held by trustees.	Afloat.
First-mortgage bonds.	Frederick L. Ames and F. Gordon Dexter.	Jan. and July.	\$27,229,000		\$27,229,000
Land-grant bonds.	Union Trust Co. of New York.		a8,000		a8,000
Sinking fund coupon bonds.	.....do.....	Mar. and Sept.	4,721,000		4,721,000
Sinking fund registered bonds.	.....do.....	.....do.....	455,000		455,000
Omaha-bridge bonds.	J. Pierpont Morgan, and Edwin F. Atk Frederick L. Ames, and Edwin F. Atkins.	April and Oct.	732,000	b\$4,000	728,000
Collateral Trust 6 per cent bonds.	Union Trust Co. of New York.	Jan. and July.	3,775,000		3,775,000
KANSAS PACIFIC R. R. CO.					
Eastern Division bonds.	H. M. Alexander	Feb. and Aug.	2,240,000		c2,240,000
Middle Division bonds.	Adolphus Meier.	June and Dec.	4,063,000		c4,063,000
Denver Extension bonds.	John A. Stewart, Wm. Endicott, and August Rütten.	May and Nov.	5,887,000		c5,887,000
Leavenworth Branch bonds.	H. M. Alexander.	.....do.....	600,000	d585,000	15,000
Consolidated-mortgage bonds.	Russell Sage and George Gould.e	.....do.....	11,720,000		f11,720,000
Income bonds.	American Loan and Trust Co., Boston.	Mar. and Sept.	263,700	g2,242,450	21,250
Income bonds. (subordinated.)	.....do.....	.....do.....	4,011,650	h3,997,100	14,550
Cheyenne Branch bonds.	Russell Sage and George J. Gould.e	May and Nov.	975,000	i971,000	4,000
Denver Extension coupon certificates.	.....do.....	.....do.....	385		385
UNION PACIFIC R. R. CO.					
Trust 5 per cent bonds.	.....do.....	.....do.....	18,000		18,000
Omaha bridge renewal bonds.	Central Trust Co., New York.	April and Oct.	889,000	j300,000	589,000
Equipment Trust bonds, series A.	American Loan and Trust Co., Boston.	.....do.....	358,000		358,000
Equipment Trust bonds, series B.	.....do.....	.....do.....	1,263,000		1,263,000
Equipment Trust bonds, series C.	.....do.....	.....do.....	671,000	b671,000	
Kansas Division and collateral mortgage bonds.	Mercantile Trust Co., New York.	May and Nov.	5,000,000	b5,000,000	
Collateral Trust 4½ per cent bonds.	New England Trust Co., Boston.	.....do.....	2,037,000	b2,037,000	1,800,000
Collateral Trust 6 per cent notes.	Drexel, Morgan & Co., New York.	Feb. and Aug.	15,976,000	i183,000	15,973,000
Total			97,682,735	12,190,550	85,492,185

^a These bonds were due April 1, 1889, but have not yet been presented for redemption.
^b Owned by the company, and held by the trustees under the trust indenture of September 4, 1891, as part security for the collateral trust 6 per cent notes.
^c Of these amounts \$304,000 in Eastern Division bonds, \$347,000 in Middle Division bonds, and \$1,651,000 in Denver Extension bonds on which the Union Pacific Railway Company pays interest, are held as investments in the Kansas Pacific Denver Extension fund.
^d \$582,000 of these bonds are held by trustees under the Kansas Pacific consolidated mortgage, the balance, or \$3,000, being owned by the company and in the hands of the treasurer.
^e Appointed since the close of the year to fill the vacancy caused by the death of Jay Gould.....
^f The American Loan and Trust Company, trustee, under the Kansas Pacific Further Security Sinking Fund, holds 116,000 of these bonds.
^g \$241,200 of these bonds are by the trustees under the Kansas Pacific consolidated mortgage. The balance, or \$1,250, are owned by the company and held by the trustees under the trust indenture of September 4, 1891, as part security for the collateral trust 6 per cent notes.
^h \$3,992,650, of these bonds are held by the company and in the hands of the Treasurer.
ⁱ Held by the trustees under the Kansas Pacific consolidated mortgage.
^j These bonds are owned by the company, \$145,000 being held by the trustees under the trust indenture of September 4, 1891, and \$155,000 being in the hands of the treasurer.

The Central Pacific was originally chartered as the Central Pacific Railroad Company of California in 1861, and under the acts of 1862 and 1864 was authorized to construct a line of road from the Pacific Coast, at or near San Francisco, or the navigable waters of the Sacramento River, and to extend it eastward to a connection with the Union Pacific. Bonds bearing 6 per cent interest were issued to aid in its construction, as follows:

Date of issue.	Amount.	Date on which interest begins.	Date of maturity.	To whom delivered.	Number of miles aided.
				C. P. Huntington...	
May 12, 1865...	\$1,258,000	Jan. 16, 1865	Jan. 16, 1895	do.....	30
Nov. 8, 1865...	384,000	Aug. 14, 1865	do.....	do.....	
Nov. 9, 1865...	256,000	Oct. 16, 1865	do.....	do.....	23
Dec. 11, 1865...	464,000	Nov. 29, 1865	do.....	do.....	
Mar. 6, 1866...	640,000	Mar. 6, 1866	Jan. 1, 1896	do.....	20
July 10, 1866...	640,000	July 10, 1866	do.....	do.....	20
Oct. 31, 1866...	320,000	Oct. 29, 1866	do.....	do.....	.....
Jan. 15, 1867...	640,000	Jan. 14, 1867	Jan. 1, 1897	do.....	
Oct. 25, 1867...	320,000	Oct. 25, 1867	do.....	do.....	24
Dec. 12, 1867...	1,152,000	Dec. 11, 1867	do.....	do.....	20
June 10, 1868...	946,000	June 9, 1868	do.....	do.....	
July 11, 1868...	320,000	July 10, 1868	do.....	do.....	20
Aug. 5, 1868...	640,000	Aug. 4, 1868	do.....	do.....	37
Aug. 14, 1868...	1,184,000	Aug. 13, 1868	do.....	do.....	40
Sept. 12, 1868...	1,280,000	Sept. 11, 1868	do.....	do.....	35
Sept. 21, 1868...	1,120,000	Sept. 19, 1868	do.....	do.....	40
Oct. 13, 1868...	1,280,000	Oct. 12, 1868	do.....	do.....	40
Oct. 28, 1868...	640,000	Oct. 26, 1868	do.....	do.....	20
Nov. 5, 1868...	640,000	Nov. 3, 1868	do.....	do.....	20
Nov. 12, 1868...	640,000	Nov. 11, 1868	do.....	do.....	20
Dec. 5, 1868...	640,000	Dec. 5, 1868	do.....	do.....	20
Dec. 7, 1868...	640,000	Dec. 7, 1868	do.....	do.....	20
Dec. 30, 1868...	640,000	Dec. 29, 1868	do.....	do.....	
Jan. 2, 1872...	4,120	Nov. 28, 1868	do.....	do.....	20
Jan. 15, 1869...	640,000	Jan. 13, 1869	Jan. 1, 1899	do.....	20
Jan. 29, 1869...	640,000	Jan. 28, 1869	do.....	do.....	20
Feb. 17, 1869...	640,000	Feb. 17, 1869	do.....	do.....	20
Mar. 2, -868...	1,066,000	do.....	do.....	do.....	20
do.....	1,333,000	Mar. 2, 1869	do.....	do.....	20
May 28, 1869...	1,786,000	May 27, 1869	do.....	do.....	
July 15, 1869...	1,314,000	do.....	do.....	do.....	100
July 16, 1869...	268,000	July 15, 1869	do.....	do.....	20.30
Dec. 31, 1869...	1,510,000	July 16, 1869	do.....	do.....	47.20
Total	25,885,120				737.50

The Central Pacific Railroad Company of California on October 31, 1864, sold and assigned its rights to the Western Pacific Railroad Company, so far as such related to the construction of a road between San Jose and Sacramento, Cal., which assignment was ratified and confirmed by act of Congress approved March 3, 1865, and bonds bearing 6 per cent interest were issued by the United States to that company as follows:

Date of issue.	Amount.	Date on which interest begins.	Date of maturity.	To whom delivered.	Number of miles aided.
Jan. 24, 1867....	\$320,000	Jan. 26, 1867	Jan. 1, 1897	Jas. A. Griswold...	20
Sept. 3, 1869....	320,000	Sept. 3, 1869	Jan. 1, 1899	C. P. Huntington...	60
Oct. 29, 1869....	1,008,000	Oct. 28, 1869	...do.....	Jas. H. Storrs, Att'y.	63
Jan. 27, 1870....	322,000	Jan. 22, 1870	.....	C. P. Huntington...	20.18
Jan. 2, 1872....	560	...do.....	.....	...do.....	
Total	1,970,560				123.18

Under the act of July 2, 1864, these companies issued, respectively, their first mortgage 6 per cent bonds, constituting a prior lien to that of the United States, as follows:

Description of bonds.	Date of issue.	Date of maturity.	Amount.
Central Pacific, series A.....	July 1, 1865	July 1, 1895	\$2,995,000
B.....	July 1, 1866	July 1, 1896	1,000,000
C.....	...do.....	...do.....	1,000,000
D.....	...do.....	...do.....	1,383,000
E.....	Jan. 1, 1867	Jan. 1, 1897	3,997,000
F.....	Jan. 1, 1868	Jan. 1, 1898	3,999,000
G.....	...do.....	...do.....	3,999,000
H.....	...do.....	...do.....	3,999,000
I.....	...do.....	...do.....	3,511,000
Total			25,883,000
Western Pacific, old issue.....	Dec. 1, 1865	Dec. 1, 1896	112,000
series A.....	July 1, 1869	July 1, 1899	1,858,000
Total			1,970,000

Since my last report \$2,995,000 Central Pacific first mortgage bonds, series A, maturing July 1, 1895, were extended

for two and one-half years and the interest reduced to 5 per cent. Similar arrangements have been made for the extension of series B, C, and D, so that all shall mature on the same date, January 1, 1898. The old issue of Western Pacific bonds, maturing December 1, 1895, have been taken up by the issue of first mortgage bonds, series A.

On June 23, 1870, the Central Pacific Railroad Company of California and the Western Pacific Railroad Company were consolidated, under the name of the Central Pacific Railroad Company, and this consolidated company is subject to the terms of the Thurman Act (May 7, 1878). The balance of debt to the United States, on June 30, 1896, was as follows: Principal of bonds issued \$27,855,680; excess of interest paid by the United States over all credits, \$30,426,329.42; total debt, \$58,282,009.42.

CONDITION OF THE BOND AND INTEREST ACCOUNT.

The public debt statement issued by the Treasury Department June 20, 1884, shows the condition of the accounts with the several Pacific railroad companies as to moneys actually covered in to their credit, but takes no account of moneys in the sinking fund held by the Treasurer of the United States, or of the compensation for services not at that time settled by the accounting officers, as shown by the following:

Name of railway.	Principal outstanding.	Interest accrued and not yet paid by the United States.	Interest repaid by companies to credit of bond and interest account.		By cash payments, 5 per cent. of net earnings.	Balance of interest paid by the United States.
			Interest paid by the United States.	By transportation services.		
Central Pacific...	\$25,885,120.00	\$776,553.60	\$24,229,108.87	\$4,784,617.43	\$648,271.96	\$18,796,219.48
Western Pacific..	1,970,560.00	59,116.80	1,727,365.74	9,367.00	.....	1,717,998.74
Union Pacific....	27,236,512.00	817,095.36	25,774,945.77	10,006,107.79	.....	15,768,837.98
Kansas Pacific...	6,303,000.00	189,090.00	6,318,423.09	3,055,291.60	.....	3,263,131.49
Central Br'h U.P.	1,600,000.00	48,000.00	1,597,808.26	162,401.27	6,926.91	1,428,480.08
Sioux C'y & Pacific	1,628,320.00	48,849.60	1,513,147.09	131,138.32	.....	1,382,008.77
Total	64,623,512.00	1,938,705.36	61,160,798.82	18,148,923.41	655,198.87	41,356,676.54

The "interest accrued and not yet paid by the United States," amounting to \$1,938,705.36, was payable July 1, 1884.

The total indebtedness of the several subsidized Pacific railroads to the United States on June 30, 1884, is as follows:

		TOTAL DEBT.
Union Pacific (including Kansas Pacific):		
Principal	\$33,539,512.00	
Accrued interest.....	33,099,554.22	
		\$66,639,066.22
Central Pacific (including Western Pacific):		
Principal	27,855,680.00	
Accrued interest.....	26,792,145.01	
		54,647,825.01
Sioux City and Pacific:		
Principal	1,628,320.00	
Accrued interest.....	1,561,996.69	
		3,190,316.69
Central Branch Union Pacific:		
Principal	1,600,000.00	
Accrued interest.....	1,645,808.26	
		3,245,808.26
Total		127,723,016.18

		TOTAL CREDIT.
Transportation services performed and money paid into the Treasury:		
Union Pacific:		
Transportation services applied to bond and interest account.....	\$13,061,399.39	
Half transportation applied to sinking fund under act of May 7, 1878.....	2,508,274.94	
Cash payment, sinking fund, under act of May 7, 1878	788,173.43	
Interest on sinking-fund investments.....	139,127.97	
		\$16,496,975.73
Central Pacific:		
Transportation services applied to bond and interest account.....	\$4,793,984.43	
Cash payment, 5 per cent. net earnings, under acts of 1862 and 1864.....	648,271.96	
Cash payment, sinking fund, under act of May 7, 1878	633,992.48	
Half transportation applied to sinking fund under act of May 7, 1878.....	1,844,423.17	
Interest on sinking fund investments.....	170,107.83	
		\$8,090,779.87
Sioux City and Pacific:		
Transportation services applied to bond and interest account..		131,138.32
Central Branch Union Pacific:		
Transportation services applied to bond and interest account.....	162,401.27	
Cash payment, 5 per cent. net earnings, under acts of 1862 and 1864.....	6,926.91	
		169,328.18
Total		24,888,222.10
Balance in favor of the United States, but not due until maturity of principal, 1895-'99.....		102,834,794.08

RECAPITULATION.

Due from Union Pacific.....	\$50,142,090.49
Due from Central Pacific.....	46,557,045.14
Due from Sioux City and Pacific.....	3,059,178.37
Due from Central Branch Union Pacific.....	3,076,480.08
Total	102,834,794.08

EXPENSES.

Conducting transportation	\$ 1,645,743.20
Maintenance of way	2,380,501.45
Motive power	2,812,921.59
Maintenance of cars	797,325.92
General expenses and taxes	563,328.40
	<u>\$ 8,208,820.56</u>

TOTAL OPERATING EXPENSES.

*Interest paid on first mortgage bonds having priority of lien over those of the United States, ledger folio 386.....	1,630,860.00
Total expenses under act of May 7, 1878.....	\$ 9,839,680.56
Net earnings so ascertained	7,305,179.93

Twenty-five per centum of net earnings.....	1,826,294.98
Amount of transportation rendered as above.....	1,019,547.85
Less difference in amount claimed by company....	7,231.23
	<u>1,012,316.62</u>
Remainder, cash or additional payment required by law	813,978.36

APPLICATION.

One half transportation services claimed.....	506,158.31
Cash payment, five per cent of net earnings.....	365,259.00
	<u>871,417.31</u>
To credit of bond and interest account.....	
One half transportation services claimed.....	506,158.31
Cash payment being that portion of the \$850,000 named in section 4 of the act of May 7, 1878, payable into the sinking fund.....	448,719.36
	<u>954,877.67</u>
	<u>\$ 1,826,294.98</u>

AN ACT authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes.

SEC. 4. That whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage, or other interest in any of the property of any or all of the several companies upon which a lien, mortgage or other incumbrance paramount to the right, title or interest of the United States for the same property, or any part of the same, may exist and be hen lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such para-

mount lien, mortgage, or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien, or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney General, under the direction of the President to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matter in this section mentioned, and to take steps to foreclose any mortgages or lien of the United States on any such railroad property.

SEC. 5. That the sinking-funds which are or may be held in the Treasury for the security of the indebtedness of either or all of said railroad companies may, in addition to the investments now authorized by law, be invested in any bonds of the United States heretofore issued for the benefit of either or all of said companies, or in any of the first-mortgage bonds of either or all of said companies, which have been issued under the authority of any law of the United States and secured by mortgages of their roads and franchises, which by any law of the United States have been made prior and paramount to the mortgage, lien, or other security of the United States in respect of its advances to either of said companies as provided by law.

From Daily Morning Chronicle, June 21, 1867. Editorial.

We print elsewhere the proceedings in the Cabinet meeting held on Tuesday. A deliberate effort, we understand, was made by certain parties to prevent the Chronicle from getting this interesting document. We are not informed as to the ringleaders in this conspiracy against us, but we hear President Johnson and his "learned Theban" had something to do with it. We are sorry Mr. Johnson has "gone back on us," to use a common phrase. Stanbery doubtless feels that we have no claim upon him. Welles, we presume, did not think it important, because it has no bearings upon naval affairs. McCulloch's contract with us does not extend beyond news connected with the Treasury Department. Randall never appoints a postmaster without letting us into the secret, but he has no interest in military commanders and registration and he naturally supposed we were equally indifferent about these

matters. Browning was not present, and his deputy is not posted as to the Secretary's arrangement with us. But Seward—dear Mr. Seward—he never forgets the Chronicle. He was the "chief among then takin' notes." It is useless for Johnson and Stanbery to combine against us while the philosopher of Auburn is in the Cabinet. The mission to Mexico may be neglected, the American claims upon England may remain unsettled, but the Secretary of State will not allow the Chronicle to appear without news.

From the National Intelligencer, Feb. 6, 1867.

THE TREASURY INVESTIGATION.

The Congressional Committee to investigate affairs in the Treasury Department have deferred their investigation until the completion of the report of the committee previously appointed for the same purpose by the Secretary of the Treasury. The latter committee, composed of some of the most reliable officers of the Department have concluded their examination and are preparing their report, which will show that they have failed to discover any of the frauds that were intimated.

It is said, however, that there is additional testimony to be presented to the Congressional Committee that was not accessible to that organized by the Secretary.

From the Washington Daily Chronicle, July 6, 1866. Part of editorial.

NEW COLATION.

The intinate cordial is at length established between the Republican and Copperhead friends of the President's policy. It was doubtless by arrangement that the former put forth the call for the so-called National Union Convention to be held

in Philadelphia in August next.

Closing paragraph:

The colation therefore will not embrace the loyalists of the South. They are to become Pariahs and outcasts under the President's policy while the rebels whose first choice for President would be Robert E. Lee, then second Jeff Davis, and then third Andrew Johnson, one to be accepted by the National Convention.

Jan. 20, 1866.

THE USURPER, ANDREW JOHNSON.

We take occasion again to say, as we have said before, that we do not protest against this usurpation because we have any fear that it will be consummated.

The Republican party in Congress, the men like Senator Sumner, Wade and others, are as much pledged to resist Executive encroachments as the most determined adherent of the opposition to the administration.

From the Evening Star, Nov. 14, 1867. News item.

Within a few days past Hon. Hugh McCulloch, Secretary of the Treasury, tendered his resignation to President Johnson. Yesterday the President addressed the Secretary a note, requesting him to withdraw his letter of resignation, and it stated today that the request has been complied with.

The Daily Morning Chronicle, Wash., D. C., Jan. 18, 1866.

Column 5.

VISITORS IN THE SENATE.

During the delivery of Senator Doolittle's speech, in the Senate yesterday, the galleries were filled to repletion. Among the visitors on the floor of the Senate were Hon. H. J. Raymond, Hon. Horace Maynard, and Hon. S. J. Randall. Lieu-

tenant General Grant and General Rufus Ingalls were among the most attentive auditors, occupying seats in that portion of the gallery reserved for the diplomatic corps.
From the Evening Star, May 11, 1867. Editorial.

SENATOR DOOLITTLE'S MISSION.

Senator Doolittle has left Washington for New York en route to Europe. His visit there is in the interest of railroad men of this country, and it is stated that Mr. Seward, hearing of the Senator's intended visit, gave him official authorization to treat with Denmark for the purchase of the Island of St. Thomas.

From the Daily Chronicle, Jan. 12, 1866. Page 2.

THE PRESIDENT AND CONGRESS.

The last and what we predict will prove to be the most utterly disappointed hope of the men who are longing to resume that fatal ascendancy in the National councils which assisted and hastened a bloody rebellion, is to create an irreconcilable difference and to precipitate an acrimonious controversy between President Johnson and the representatives of the American people in Congress assembled. Anything for power is their motto. They change their expedients with the quickness of the actor who has studied the art of transforming himself into many characters. Yesterday we quoted copiously from the National Intelligencer of October, 1864, showing the virulent spirit against Andrew Johnson, when he was fighting his unparalleled battle with the traitors in Tennessee, of the same men who still own and run that organ of the unforgiving and ungrateful disloyalists in our midst.

From Daily Chronicle, July 11, 1866. Page 1.

Treasury: The Union Pacific Railroad.—The fourth section

of 20 miles of the Union Pacific Railroad, eastern division, having been completed and a report to that effect having been made by the commissioners, Gen. J. H. Simpson, Hon. Wm. M. White, and Hon. Wm. Prescott Smith, the Secretary of the Treasury has ordered the issue to the above named railroad company of bonds to the amount of \$320,000, to which by law they are entitled.

The Secretary has also ordered the issue of bonds to the amount of \$640,000 to the Central Pacific Railroad Company, of California, on the completion of one-fourth of the work of a section of 20 miles of the road, the cost of which has exceeded \$1,015,000.

September 10, 1866.

Treasury: The Pacific Railroad Bonds.—The bonds increase steadily in amount as the road advances westward. On January 1, the total was \$3,002,000; April 1, \$4,634,000; August 1, \$6,042,000; September 1, \$8,202,000; an increase since the beginning of the year of \$5,200,000, and for the month of \$2,160,000.

REPORT OF THE COMMISSIONER APPOINTED TO
SETTLE THE INDEBTEDNESS TO THE GOV-
ERNMENT GROWING OUT OF THE ISSUE OF
BONDS IN AID OF THE CONSTRUCTION OF
THE CENTRAL PACIFIC AND WESTERN PA-
CIFIC RAILROADS.

Washington, D. C., February 15, 1899.

To the House of Representatives:

The undersigned commissioners, appointed by the deficiency appropriation act approved July 7, 1898, to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western

Pacific Railroads, would respectfully report that they have concluded a settlement of the said indebtedness with the Central Pacific Railroad Company, the owner of the said railroads. A copy of the agreement of settlement is herewith transmitted.

The settlement is made as of the 1st day of February, 1899, at which date the amount due to the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific Railroads amounted to the sum of \$58,812,715.48, that being the full amount necessary to reimburse the United States for the moneys paid for interest or otherwise in aid of the construction of said railroads.

Said indebtedness is, by the agreement of settlement, funded at the amount aforesaid into twenty promisory notes, dated February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of \$2,940,635.78, which is one-twentieth of the total amount due. Said note bears interest at the rate of 3 per cent per annum, payable semiannually, and have a condition attached thereto to the effect that if default be made, in any payment of either principal or interest of any of said notes, or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of the agreement of settlement.

It is further provided that the payment of the principal and interest of said notes shall be secured by \$58,820,000 of face value first refunding mortgage 4 per cent gold bonds to be hereafter issued by the Central Pacific Railroad Company, or its successor, having title to the railroads now owned by said company and specified in said agreement, such bonds to be part of an issue of not exceeding \$100,000,000 in all.

Said bonds are to be secured by a mortgage upon all rail-

roads, equipments, and terminals now owned by said Central Pacific Railroad Company, which mortgage shall be the first lien upon such property, or shall be secured by the deposit as collateral security therefor of certain percentages of the now outstanding bonds upon said property, or the different divisional parts thereof. The form of such mortgage is subject to the agreement of the parties to said agreement of settlement, and has been approved by the Attorney General.

The agreement further provides that Speyer & Company, who are a party thereto shall, within one month after the delivery to the United States of the settlement notes, accept from the Secretary of the Treasury, the four earliest maturing notes, and pay to the United States the face value thereof, with accrued interest thereon to the date of payment, without recourse further than that Speyer & Co. shall, until the delivery of the refunding bonds as collateral, be entitled to share pro rata with the United States in the lien and all proceeds of the lien in favor of the United States to secure said indebtedness.

The said agreement was submitted in writing to the President and approved by him on the 15th day of February, and the said promisory notes have been duly delivered to the Treasurer of the United States.

Other provisions and particulars of said agreement will appear by a perusal thereof, to which reference is respectfully made.

The execution of the agreement was duly authorized by resolution of the board of directors of the Central Pacific Railroad Company, and approved by the formal action and consent of a large majority of the stockholders.

The commissioners have not found it necessary to expend any part of the sum of \$20,000 appropriated for the expenses of the commission.

LYMAN J. GAGE,
Secretary of the Treasury.
CORNELIUS N. BLISS,
Secretary of the Interior.
JOHN W. GRIGGS,
Attorney General.

And whereas, by act of Congress entitled, "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending june thirtieth, eighteen hundred and ninety-eight, and for prior years, and for other purposes," approved July 7, 1898, it was among other things provided as follows, viz: "That the Secretary of the Treasury, the Secretary of the Interior and the Attorney General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads upon such terms and in such manner as may be agreed upon by them, or by majority of them, and the owners of said railroads: *Provided*, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

"That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: *And also provided*, That said commission

are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semiannually, and with such security as to said commission may seem expedient: *Provided however*, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years and the whole amount, principal and interest, shall be paid in equal semiannual instalments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest, or any part thereof then the whole sum and all instalments principal and interest shall immediately become due and payable, notwithstanding any other stipulation of said settlement: *Provided further*, That unless the settlement herein authorized be perfected within one year after the passage of this act the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled; and nothing in this act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

"That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

And whereas it has been agreed by and between the commission appointed by said act and the owners of the railroads above described that the indebtedness of the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads should be settled upon the terms and in the manner hereinafter agreed to, subject to the approval of the President of the

United States, as provided in said last-mentioned act ;

And whereas Messrs. Speyer & Company from time to time negotiated the sale of large amounts of the bonds secured by mortgage upon the railroads of the Central Pacific Railroad Company above mentioned, and are desirous of co-operating in a settlement of all matters relating to or affecting the indebtedness of said company and the adjustment of its affairs ;

And whereas of the first mortgage bonds of the Central Pacific Railroad Company of California secured upon the bond-aided lines above mentioned, and amounting in the aggregate at their face value to twenty-five million eight hundred and eighty-one thousand dollars (\$25,881,000), there have been already deposited and still remain on deposit, subject to the order of Messrs. Speyer & Company, bonds to the amount at their face value of twenty-five million six hundred and thirteen thousand dollars (\$25,613,000) under a bondholders' agreement dated August 14, 1897, a copy whereof has been furnished to the party of the first part thereto ;

And whereas of the Central Pacific Railroad Company's fifty-year five per cent bonds issued under the mortgage to the Metropolitan Trust Company of the City of New York, dated April 1, 1889, above mentioned, amounting in the aggregate (after deducting said bonds so as aforesaid held as security for the said land bonds) to the sum of ten million two hundred and forty-five thousand dollars (\$10,245,000) there have been deposited and still remain on deposit, subject to the order of Messrs. Speyer & Company, bonds to the amount at their face value of eight million six hundred and eighty-six thousand dollars (\$8,686,000) under a bondholders' agreement dated Oct. 1, 1897, a copy whereof has been furnished to the party of the first part hereto.

And whereas the owners of the bonds deposited under each

of the aforesaid agreements of Aug. 14, 1897, and Oct. 1, 1897, have thereby authorized Messrs. Speyer & Co. in their behalf, to negotiate with any other committees or representatives of holders of other securities of said railroad company or with the Government of the United States or otherwise, for participation in respect of the deposited bonds in any plan of readjustment or reorganization or otherwise.

And whereas there have been deposited with committees consisting of F. G. Banbury, M. P., John B. Akroyd, Lord Alwyne Compton, M. P., Daniel Marks, and Joseph Price in London, and August Belmont, Hon. John G. Carlisle, and George Coppel, in New York, under agreements, copies of which have been furnished to the party of the first part, certificates of the capital stock of the Central Pacific Railroad Company to the amount, at their face value, of at least thirty-eight million four hundred and one thousand eight hundred dollars (\$38,401,800), out of a total outstanding capital stock of said company amounting, at its par value, to sixty-seven million two hundred and seventy-five thousand five hundred dollars (\$67,275,500), and the said committees have authorized and requested the said Speyer & Company to negotiate, on their behalf, with the commission appointed by the act of Congress of July 7, 1898, above referred to, the basis of a settlement under and in the pursuance of the said act of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of said Central Pacific and Western Pacific bond-aided railroads above mentioned.

Now, therefore, this agreement witnesseth that, in consideration of the premises, the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree, to and with each other as follows, that is to say:

That the indebtedness to the United States growing out of

the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads shall be, and it hereby is, settled upon the terms and in the manner following, that is to say:

FIRST.

The amount due the United States, being the full amount of the principal and interest, and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise, is hereby found and agreed to be, on the day of the date of this agreement, the sum of fifty-eight million eight hundred and twelve thousand seven hundred and fifteen dollars and forty-eight cents (\$58,812,715.48).

SECOND.

Within thirty days after this settlement shall become binding by the submission thereof in writing to the President, and his approval thereof, the Central Pacific Railroad Company shall deliver to the Treasurer of the United States its twenty promissory notes, bearing even date herewith, payable respectively on or before the expiration of each successive six months for ten years counting from the date of this agreement, each note being for one-twentieth of the foregoing sum of \$58,812,715.48, and bearing interest at the rate of three per cent per annum, payable semiannually.

Provided, however, That if default shall be made in any payment of either principal or interest of any of said notes, or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable notwithstanding any other stipulation of this agreement of settlement.

Each of the said notes shall be in the following form, viz:

San Francisco, Cal., Feb. 1, 1899.

On or before the Central Pacific Railroad Company will pay to the order of the United States of America, two million nine hundred and forty thousand six hundred and thirty-five 78/100 dollars, with interest meantime at the rate of three per cent per annum, payable semiannually, for value received.

This is one of a series of twenty notes given by said railroad company to the United States of America, each for the same principal sum and bearing interest at the same rate, but maturing at different dates; that is to say, on or before the expiration of each successive six months for ten years, counting from the date hereof. If default shall be made in any payment of either principal or interest of any said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable.

THIRD.

The payment of the principal and interest of the said notes and of the indebtedness represented thereby shall be secured by the pledge of \$58,820,000, face value, first refunding mortgage four per cent gold bonds issued by the Central Pacific Railroad Company, or its successor company having title to the foresaid railroads, such bonds to be part of an issue hereinafter described, not exceeding \$100,000,000 in all, one-twentieth part of such pledged bonds to be held as security for each of said note.

FOURTH.

The said refunding bonds so to be pledged as security for the payment of the said notes and interest shall be delivered to the Treasurer of the United States within a reasonable time

after this settlement becomes binding, for obtaining the deposit of securities, the assent of security owners, and the carrying out of such plan of reorganization or readjustment as may be necessary to enable the Central Pacific Railroad Company or its successor company to issue said refunding bonds and make the mortgage to secure the same a valid lien upon the railroads aforesaid in accordance with the requirements herein expressed. A period of ten months from the delivery of said notes is hereby declared to be *prima facie* such reasonable time, but the Central Pacific Railroad Company agrees to use its best efforts to perfect such mortgage and deliver such bonds before the expiration of that time; and, on the other hand, should such reorganization or readjustment be delayed by the pendency of judicial proceedings for the purpose of enabling the company which is to make the new mortgage to execute and deliver refunding bonds secured as provided herein or be delayed by adverse litigation, such period is to be correspondingly extended: *Provided, however,* That such period shall not be extended for any cause whatever for more than three years from the date of this agreement, except with the written approval of the President of the United States.

If default shall be made in the delivery of the said bonds so to be pledged within the period hereinabove prescribed for such delivery thereof, including any extension which there may have been under the foregoing provisions, then the whole amount of the said notes then outstanding, principal and interest, shall immediately become due and payable.

The said first refunding mortgage four per cent gold bonds referred to in article third and this article of this agreement, are to run for at least forty-five years, and to bear interest at the rate of four per cent per annum, payable semiannually, and are to be payable, principal and interest, in gold coin of

the United States, and are to be a part of an issue not exceeding one hundred million dollars face value, secured by mortgage upon all the railroads, equipment, and terminals now owned by the Central Pacific Railroad Company. Such mortgages shall be the first lien upon the said railroads, equipment, and terminal, or shall be secured by deposit as COLLATERAL security therefor of at least ninety per cent of the now outstanding first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company referred to in paragraphs first, second, and third in the recitals to this agreement describing the mortgages and liens on "bond-aided lines," and of at least seventy-five per cent of the aggregate of all now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In making such computation as to the amount of deposited bonds, it is agreed that the \$2,038,000 fifty-year five per cent bonds held as security for the outstanding land bonds as above stated, shall not be counted as outstanding bonds.

If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the land bonds dated Oct. 1, 1870, above referred to), shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit of all outstanding bonds now secured thereby as security for the said refunding bonds. The satisfaction and discharge of the said mortgage securing the land bonds dated Oct. 1, 1870, shall be deemed to be the equivalent of the deposit as security for said refunding bonds of all bonds now secured by that mortgage:

Provided, That the \$2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be canceled or deposited as security for such refunding bonds.

The mortgage securing such refunding bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof, and shall be in the form agreed upon by the parties hereto, and now identified by the signature of the Attorney General of the United States, unless the form thereof should be hereafter modified with the consent of the Attorney General of the United States and the party of the second part, or its successor company, and the party of the third part hereto.

Upon the satisfaction of record of any existing mortgage any securities or funds held in any sinking fund created or existing by or under any such mortgage shall be surrendered to the railroad company or its successor company.

The lands granted to the Central Pacific Railroad Company of California and to the California and Oregon Railroad Company, as above stated, are not to be covered by the mortgage securing such refunding bonds until the delivery to the Treasurer of the United States of the refunding bonds to be pledged to it under article third hereof, secured as aforesaid, all rights of the United States in respect to said granted lands shall remain in full force and effect, but shall not be enforced unless the Central Pacific Railroad Company, or its successor company, shall make default under this agreement; and upon such delivery of said refunding bond, secured as aforesaid, all rights, interest, and claims of the United States in, to, and in respect to such lands shall cease and determine.

From time to time, as the principal or any part of the principal of said notes shall be paid, the United States or other holders of said notes shall return to said railroad company, or

its successors, an equal amount at their face value of the said refunding bonds with all unmatured coupons appertaining thereto; and, as interest shall be paid upon said notes, the United States or other holders of said notes shall detach and return to said railroad company or its successors the coupons appertaining to said bonds representing interest thereon to the date to which interest shall have been paid upon said notes, which coupons shall thereupon be forthwith canceled.

FIFTH.

Until the refunding bonds hereinbefore provided for, secured as aforesaid, shall have been delivered to the Treasurer of the United States as security for the said notes, the lien in favor of the United States, reserved in the acts of Congress above mentioned to secure the repayment to the United States of the above mentioned indebtedness, as such lien now exists, shall remain in full force and effect to the extent of such indebtedness as security for the notes representing such indebtedness, and nothing herein contained shall be deemed to prevent the United States from intervening for the protection of its said lien in any legal proceedings brought to foreclose any lien on said railroads or any part thereof or otherwise.

When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said refunding bonds secured as aforesaid, then the lien in favor of the United States above referred to, as then existing, shall immediately vest in, and it is hereby, upon the happening of that event, transferred to, the trustee of the mortgage securing such refunding bonds as security for the entire issue of such bonds.

SIXTH.

Until the notes to be given by the Central Pacific Railroad Company under article second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company or its successor company from the United States subsequent to the date of this agreement in respect of services to the United States upon the bond-aided lines from a point about five miles west of Ogden to Sacramento, and from Sacramento to San Jose, above referred to, shall, as audited and allowed, be applied by the United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof.

SEVENTH.

Messrs. Speyer & Co. within one month after the delivery to the United States of the notes referred to in article second hereof, will, against delivery to them of the four earliest maturing notes, indorsed to their order by the Secretary of the Treasury on behalf of the United States, without recourse to it, pay to the United States the face value of such notes, viz: Eleven million seven hundred and sixty-two thousand five hundred and forty-three dollars and twelve cents (\$11,762,543.12) with accrued interest thereon to date of payment. From and after the time when such payment shall have been made by Messrs. Speyer & Co. they shall, until the delivery of such refunding bonds, be entitled to share pro rata with the United States in the lien and all proceeds of the lien in favor of the United States to secure the indebtedness above referred to. Upon delivery of the said refunding bonds, Messrs. Speyer

& Co. shall be entitled to receive such bonds to the amount, at their face value, of the principal of said notes then remaining unpaid which are then held by said Speyer & Co.

Within ten days after the maturity of each of said notes held by Messrs. Speyer & Co., the said Speyer & Co. shall notify the Secretary of the Treasury of the United States whether such matured note and the matured interest on all the notes held by them have been paid to them or not.

Until the refunding bonds hereinbefore provided for secured as aforesaid shall have been delivered to the Treasurer of the United States as security for the said notes, all rights of the United States in or to or in respect of the said lien, and in or to or in respect of the lands granted as aforesaid, shall remain unaffected by the transfer of the said notes to Speyer & Co., and all right and title of the United States in the said lien, and in respect of the said lands, shall be deemed to continue in the United States as fully as if the said notes remained in its possession and ownership, save only that the said right and title shall be deemed to be held by the United States for the pro rata benefit of itself and said Speyer & Co., and the United States may bring and maintain any and all actions, suits, and proceedings which it might have brought or maintained, and may do any and all acts and things which it might have done had all the said notes remained in its possession and ownership, provided that all recoveries, benefits, and advantages derived or obtained through or by means of such actions, suits, proceedings, and acts for the enforcement of such lien and rights, shall inure to the pro rata benefit of the United States and said Speyer & Co. In case of any default in payment of the principal or interest of any of said notes, the United States will thereupon proceed for the enforcement of the said lien.

In witness whereof this agreement has been executed on

behalf of the United States of America by Hon. Lyman J. Gage, Secretary of the Treasury, Hon. Cornelius N. Bliss, Secretary of the Interior, and Hon. John W. Griggs, Attorney General, appointed by the act of Congress a commission as hereabove stated; by the Central Pacific Railroad Company, by its president and under its corporate seal, attested by its secretary, and by Messrs. Speyer & Co., under their hands, the day and year first above written. Executed in triplicate.

LYMAN J. GAGE,
Secretary of the Treasury.
CORNELIUS N. BLISS,
Secretary of the Interior.
JOHN W. GRIGGS,
Attorney-General.

Approved:

WILLIAM MCKINLEY,
Central Pacific Railroad Company,
By ISAAC L. REQUA,
President.

Attest:

W. M. THOMPSON, *Secretary.* (SEAL)
SPEYER & CO.

State of California, City and County of San Francisco, ss:

On this 6th day of February A. D. 1899, before me, E. B. Ryan, a notary public in and for the city and county of San Francisco duly commissioned and sworn personally appeared Isaac L. Requa, known to me to be the president, and W. M. Thompson, known to me to be the Secretary, of the Central Pacific Railroad Company, the corporation described in and who executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

(SEAL)

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

CHAPTER 8

SUPPLEMENTAL INFORMATION BY AFFIDAVIT.

It is stated as information by one who stood in intimate relation to Charles Durkee, and to whom he committed such information in keeping as a secret which he had not given to either of his executors as appointed in his will, that shortly before his death he called this party to his bedside, and said, "that he had had his suspicions aroused by certain things that had transpired within the last six months; that one of his intended executors—if not both—had evil designs on his estate, and that he had taken the precaution to put his more valuable papers and evidences of estate into a certain 'tin box' which he pointed out to the witness, and that he wished this witness to observe that it was 'sealed' and directed to 'The Metropolitan National Bank of the City of New York;'" that he charged it as his dying request upon this witness that she would keep watch over his executors, to see that this box was safely consigned to said 'Metropolitan National Bank, in said City of New York."

* * * * *

This statement was made the subject of consideration in the Cabinet meeting of April 22, A. D. 1884, Chester A. Arthur being President. At the conclusion of the conference in relation to the same it was agreed between this affiant (L. C. Blaisdell) and Secretary Folger, on behalf of the Government, that the said Secretary should have the necessary authority to call for and to receive, in the name of the said Blaisdell, the said "tin box," if the same could be found in aforesaid bank, or the contents or any part of the contents that such box might have contained; and that the same should be taken possession of by the Solicitor of the Treasury and held for the "joint use and benefit of the heirs at law of Charles Durkee and the United States."

In the presence of this affiant and another witness, the Solicitor of the Treasury, about the year and during the month of August, 1888,

in his office, stated that papers of the character described in the above had been delivered by the said Metropolitan Nation Bank, presumably so, he judged from the circumstance of the assignment of said bank being found on the books of the Solicitor, and containing, ostensibly, "the assignment of all such matters as were designated" by the order of the Secretary of the Treasury of April 22, A. D. 1884. This affiant was not at such time as learned in the law, or rules and regulations governing the Departments, as he believes himself now to be, and believes that the very attorney, whom he had with him to assist him, was then in collusion with the enemies of the Government and the defendants in this case, No. 18,003, to prevent affiant from seeing said assignment and judging for himself whether it contained the matters and things which he himself and the Secretary of the Treasury had specified, and put into an order of the Secretary of the Treasury that it should contain, to wit, the private papers of said Durkee that should show the assignment and delivery of said Durkee by Pacific railroad corporations designated in said suit, of all the bonds so designated in the petition in said case.

Affiant here again states, as under oath, that such order of said Secretary of the Treasury was to contain the private papers, and all the private papers, whether letters, deeds, bonds, or assignments or other character of evidences of indebtedness to Charles Durkee aforesaid, which had at any time come into the possession or under the control of the said Metropolitan National Bank of the City of New York aforesaid; that said Secretary made the proposition to receive from affiant such character of orders and to execute the same at once; and that said Secretary left the room with the last words on his lips which affiant ever heard him utter, saying, "I will see that the order is at once transmitted to the subtreasury in the City of New York."

LEONARD C. BLAISDELL,

Attorney of Record of Case 18,003, Court of Claims.

STATE OF INDIANA, }
County of Marion, } *ss:*

Subscribed and sworn to before me, the undersigned notary public, in and for the aforesaid County and State, this 24th day of May, 1895.

JOHN T. PLUMMER,

Notary Public.

In the Court of Claims. L. C. Blaisdell v. The United States.

Applicant for rule on the Secretary of the Treasury to show cause why judgment should not be entered against the United States and in favor of the petitioners and claimants against the United States. (Final statement of Case 18,003. In Court of Claims. L. C. Blaisdell v. The United States.)

This case was brought before the honorable court through the intervention of the Committee on Claims of the Fifty-fourth Congress, from whose files it will appear that the plaintiff had been duly presented by a Member of that Congress, the Hon. William M. Springer of the State of Illinois.

It was filed in the first instance by the present claimant, L. C. Blaisdell, in behalf of not only the heirs at law of the descendant, Charles Durkee, but in behalf of all creditors of the lien prior and paramount to that of the United States, as designated in the several acts of Congress, 1864, 1878, and of the act of March 3, 1887.

Thus it appears on the face of the petition that it was a claim filed and founded upon acts of Congress, which acts were in the petition definitely and at length set forth in form and substance, and made exhibits for the purposes of conveying to the mind of the court the foundation upon which all rights claimed by the complainants in the case were to be ascertained. The rights of the complainants whatever they shall be ascertained by the honorable court to be or to have heretofore been, are fully defined in the Pacific Railroad laws set up, designated, and plead in the preliminary and informal petition; in the more complete petition following on the case or matter of the petition being by the court taken for consideration as in ex parte; and must finally appear, not necessarily from any or all of the answers of the several Departments, Bureaus, and officers of the Government, the information thereby conveyed to the court, but through the information conveyed to the mind of the court through statutes of the United States, and specific acts of Congress defining the particular rights and character of rights set up and appearing in this petition.

It will only be necessary to merely call the attention of this honorable court to the acts of Congress that have been duly presented to it as the authority for bringing this claim against the United States, to complete all the testimony in support of the claim herein presented that can be required of the complainants in the case to present.

The information that has been filed with this honorable court by the attorney of record in the case—and that particular portion of it

which classifies as "official matter," certified by the several Departments, Bureaus, and officers of the Government—disclose a state of facts which precludes the possibility of there being hereafter, at any time, by or through any Department, Bureau, or officer of the Government, a state of facts to it presented that shall run counter to or in any material from modify the conclusions which the court may draw from that which has been already thus presented.

A summary of these facts thus presented, and that have been on file with this honorable court for the greater part of the two years last preceding the present date, shows to the honorable court all the essential information necessary that it shall have obtained before proceeding to enter final judgment in the cause of the complainants versus the United States.

As they embrace a large part of the history of the Pacific railroad system, their operations, duties, and obligations were as expressed in the United States statutes; and so great a portion of the detailed information is to be conveyed to the court through official reports of the Auditor of Railroad Accounts in the first instance and Railroad Commissioner's reports in the latter instances, it is deemed in order to present first the annual report of the Auditor of Railroad Accounts to the Secretary of the Interior for the year ending June 30, 1878.

On page 6 of this report occur the words:

"The act of Congress approved May 7, 1878 (chap. 96, p. 56, Statute II, 1877-78), entitled 'An act to alter and amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, * * * approved 1862,"' * * * and 'to alter and amend act of 1864,' in amendment of said first-named act requires:

"That the net earnings of said act of 1862, of said railroad companies, respectively, the Central Pacific Railroad Company of California and the Union Pacific Railroad Company shall be ascertained by deducting from the gross amount of their earnings, respectively, the necessary expenses paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them, respectively, within the year in discharge of interest on their first-mortgage bonds."

On the first proposition, to wit, the amount paid by these companies "within any given year in operating their railroad and telegraph lines, and in keeping the same proposition, namely, 'with the amount paid

by them, respectively, within the year or at any other time, in discharge of interest on their first-mortgage bonds,' with this proposition we do propose to deal."

It is made the basis of the rights set up by the complainants against the United States that the interest accrued upon these first-mortgage bonds, to wit:

Union Pacific	\$27,236,512.00
Central Pacific	25,885,120.00
Denver Pacific Railroad & Telegraph Co. (Western Pacific)	1,970,560.00
Knasas Pacific	1,600,000.00
Central Branch Union Pacific Railroad Company.....	1,600,000.00
Sious City and Pacific Railroad Company.....	1,628,320.00

A total first-mortgage debt and indebtedness of lien prior and paramount to that of the United States of \$64,623,512, with interest accrued thereon at the rate of 6 per cent per annum, was, until the dates, respectively, March 3, A. D. 1883, and January 1, A. D. 1885, the debt and the expressed indebtedness of these railroad and telegraph companies, jointly and severally, to such parties and persons as were expressed and designated in "certain files and records of the Treasury Department," and which were referred to in these terms by Hon. William Lawrence, First Comptroller of the Treasury, in Comptroller's Decision by said William Lawrence, under the date of December 3, A. D. 1884, and at such date became, by contract, an indebtedness of the United States.

That the names of "the lawful and just holders of" the said "lien prior and paramount to that of the United States" have not appeared of record within the knowledge of this honorable court, and have never yet been produced (so far as known) before any committee of either House of Congress, not reported in any railroad report required by law to have contained them, constitutes no evidence, and no rebuttal of the testimony that first-mortgage creditors answering to that description and of such character of lien have been so well provided with protection in the expressed provisions of the acts of Congress—1864, 1878, and 1887—that the very "liens" or incumbrances thus openly recognized by such character of mortgages in the Department of the Treasury and the Department of the Interior, both of which said Depart-

ments contain the most conclusive evidence and recorded proofs that such bonds do exist.

The Departments just named have, it is true, failed to produce the "evidence called for by the complainants in the first instance, and by the honorable court in the second instance, that such mortgage bonds do exist; but these acts of Congress just referred to, more especially the preamble to the act of May 7, 1878, declare that the Union Pacific Railroad Company named in this and the other said acts of Congress, and the Central Pacific Railroad Company, and others therein named, "did and have issued" an amount of "their own bonds" equal to the amount so issued (as therein expressed) to them, and each of them, by the United States."

Furthermore, rights of owners of bonds thus issued are not in law or equity, to be defeated by the neglect and refusal of the said several Departments, or any officer, bureaus, or heads of such Departments to make and preserve proper "files and records" of the various transactions that may have occurred in either one.

In pleading for the protection of the rights of this class of creditors of the United States, I shall submit for the consideration of the honorable court the general proposition that rights thus guaranteed by acts of Congress are not to be defeated by "the neglect and refusal of officers of the Government" ("more particularly the heads of the two Departments last named) to keep, preserve for the use of this court, and to present the true and perfect record of such transactions occurring therein as have involved the credit of the United States to the total amount named in the said Pacific Railroad bonds."

The truth of this last proposition, I believe, is not questioned by any head of any Department of the Government so far as I have yet been informed, to wit, the records of the Treasury Department do disclose the "public-debt statement; that all interest accrued upon the said bonds are payable by the United States." To whom payable is not disclosed. That the principal of the bonds (\$64,623,512) is also "payable by the United States." To whom payable is not disclosed.

Nor is it disclosed (by record or information to Congress given) when, in the history of these bonds, that portion of them became due and payable which represented "interest indebtedness accrued for the period of time which intervened between issue of the principal bonds and the date of April 22, 1884." The plaintiff in the case has alleged the fact of the transposition of a specific and well-defined and ex-

pressed indebtedness of these corporations into an indebtedness of these corporations into an indebtedness of the United States. The Treasury Department corroborates the fact states, that such indebtedness has become the indebtedness of the United States, but does not show when it so became (debt payable by the United States).

The Interior (Railroad Department thereof) carries the same debt account under the title or name of "bond indebtedness," and charges the same item against the United States as such, which the Treasury Department terms a cash and "sinking-fund indebtedness." The information is thus disclosed to the honorable court that there is a vast discrepancy between the "public-debt statement of the Secretary of the Treasury and that disclosed in the Department of the Interior. The sinking fund as shown by the Commissioner of Railroads does not show to exceed \$27,000,000 (less that \$20,000,000 in 1884). While the Treasury Department (unless the Pacific Railroad Committee, under Mr. Outhwaite, have misstated) shows \$64,000,000 of "sinking-fund indebtedness of the Government," by reason of these Pacific Railroad obligations, in addition to that shown in the Department of the Interior.

To prove that there is a gigantic discrepancy and erroneous statement of the public liabilities in this respect, as between these two Departments, the honorable court has but to summon Mr. Outhwaite as a witness, who, with 13 other members of that committee (in 1888), declared "that the amount of \$64,623,512 in cash" was, on the 1st day of January, 1885, an "outstanding liability" of the Government, by reason of that amount of cash having been on that date deposited with the Secretary of the Treasury "for the definitely ascertained indebtedness of these several Pacific railroad companies to their lawful creditors" of the lien prior and paramount to that of the United States.

If the liability of the United States—or my statement of its liability in this respect, and as alleged in my petition, both the original and the amended—has been disputed by an answer, plea, or demurrer filed with this honorable court, I am as yet not made aware of the fact. The statement has gone before the Department of the Treasury, signed and sworn to as set forth in my affidavits, and stands unchallenged, so far as I know.

The order of the court for the information that would deny the truth of the statement has gone forth and does not bring the information that would deny it.

The statement has stood in form and in print before the eyes of every Secretary of the Treasury from the date of January 12, 1889, and not one has attempted to deny it or make any official answer tending to deny the truth, substantially, of my statements, as in petition contained. The President of the United States (Benjamin Harrison, while Chief Executive) caused all my statements to be placed before himself, in official capacity, and in official capacity referred them "for the official action" (note the words) of the Secretary of the Treasury. The Supreme Court, in 99 United States Reports, supports the statement of my petition, that the United States is debtor to the "sinking fund" and in favor of "the lawful and just holders of paramount lien," as stated, "to the full amount of the deposits made under the provisions for such sinking fund as contained in the act of May 7, 1878." The committee referred to last has the information that the sum of \$64,623,512 is and has been withheld from "the possession of the lawful and just holders of such paramount lien by each and every Secretary of the Treasury, on the plea or notion, rather, that such officer held a discretionary authority to make of such fund a sinking fund."

Congress, by act of March 3, 1887, directed that officer "to clear off such paramount lien or incumbrance by payments (by payments, mark the words) out of the sinking fund," and provided that the entire amount be paid, whether the sinking fund was more or less than the amount due to the lawful owners of such bonds, or the "lawful creditors of the paramount lien aforesaid."

For this disobedience of the requirement—the direct, positive, and special order of Congress—the present incumbent in that office is answerable. He can not and does not answer either Congress or this honorable court that he knows not the lawful creditors of the United States; that he has no legal knowledge of them that he is bound by law to take cognizance of.

He appears to rest contentedly upon "want of information, such information as would create an official liability on his part to answer" the demands made by me on the United States Treasury. He acts, or, rather, neglects to act, and rests upon the assumption that his neglect and refusal to answer me in official manner, either by affirmation or by denial of the claims I have filed, prevents the consummation of my purpose to enforce an accounting from him; and he acts as if he expected that the entire body of Congress and the Supreme

Court, including this honorable court, would unitedly be unable to compel him either to affirm or deny my right to an accounting, and thus prevent not only myself and my clients from obtaining the benefits of those acts of Congress upon which we rely for protection, but that all possible creditors of such lien, as Congress provided, should be secured to "its lawful holders" (should others than myself and clients prove to be "the lawful beneficiaries"), would be powerless, and the courts named, and Congress itself, be powerless to enforce against his will the payment of the sums due.

With these statements I have concluded to include the following motion: That the Secretary of the Treasury be, and with the approval of this honorable court, is hereby, ordered to show cause, by his personal appearance before this honorable court, at the next ensuing rule day, why judgment should not be rendered in behalf of the petitioners and claimants in said case and cause, No. 18,003, in accordance with the statement of claims against the United States made to this honorable court.

Very respectfully submitted by

Attorney of Record in Case No. 18,003.

To the Honorable Chief Justice and Judges thereof.

(In the Court of Claims of the United States. Term 1894-1895. Leonard C. Blaisdell, attorney in fact, etc., et al., v. The United States. No. 18,003. Filed March 6, 1895.)

AMENDED PETITION.

The claimants, Leonard C. Blaisdell, attorney in fact for the following named heirs at law of Charles Durkee, late a citizen of the United States, now deceased, to wit:

George Durkee, Joseph Durkee, Charles C. Durkee, Harvey Durkee, Martha K. Durkee, Bessie Durkee, John Durkee, Charles E. Durkee, Harriet Fluent, Mary L. Hendrix, Caroline C. Johnson, Charles L. Boardman, Harriet Boardman, Henry Boardman, Jessie H. Moneghan, May A. Fargo, Ellen Church, Mary L. Furness, Laura A. Huntington, Louiza Hoag, and Harriet L. Blaisdell (who is the wife of Leonard C. Blaisdell), for their amended petition herein say:

I.

That they are all citizens of the United States; that their said attor-

ney in fact resides at Champaign, in the State of Illinois; that they are the sole and only heirs at law of said Charles Durkee, deceased; that they and their said attorney in fact have always yielded true allegiance to the United States, and that they are the sole owners of the claim herein sued upon.

II.

That the said Charles Durkee, during his life, was lawfully possessed and was the owner of certain prior and paramount lien bonds of the Union and Central Pacific railroad companies, which bonds had been issued by said companies through their officers and agents in the construction and equipment of said railroads, and which bonds were of the value and amount of sixty-four million six hundred and twenty-three thousand five hundred and twelve dollars (\$64,623,512.00) and that said bonds subsequently were deposited in the Treasury Department of the United States, or in a sub-treasury, to be held by the United States in trust for the use and benefit of the owners thereof, and their payment was guaranteed by the Government of the United States, and the claimants say that, by virtue of being the heirs at law of said decedent, and by virtue of the premises, they became at his decease the lawful owners of the bonds aforesaid.

III.

That the Government of the United States, pursuant to law, collected of and from the said Union and Central Pacific railroad companies the said sum of sixty-four million six hundred and twenty-three thousand five hundred and twelve dollars (\$64,623,512.00); and now holds the same for the protection, security, and benefit of the lawful and just holders of any mortgage or lien of such companies, respectively, lawfully paramount to the rights of the United States, but the United States, having neglected, failed, and refused to pay the same over to these claimants as the heirs at law of said decedent, and who are the lawful owners of said bonds, and are lawfully and justly entitled to the sum of money aforesaid, although often requested so to do by the claimants, and that, notwithstanding the premises, that sum is now retained in the Treasury or in a sub-treasury of the United States.

IV.

And the claimants say that they are justly entitled to the sum aforesaid on account of said bonds and of the premises hereinbefore stated, and that the said sum is justly due and owing to them from the United States, and is wholly unpaid.

V.

And the claimants further say that they have made the allegations in their said amended petition as specific and accurate as they are able to do from the data in their possession, the accurate and specific information therein being in possession of the defendant, and they wish to reserve their right to further amend said petition should the allegations herein be properly amendable in the light of further information.

Wherefore the claimants demand judgment against the United States in the sum of sixty-four million six hundred and twenty-three thousand five hundred and twelve dollars (\$64,623,512.00), and all proper relief in the premises.

LEONARD C. BLAISDELL,
Attorney in Fact and One of the Petitioners.

TOTAL INDEBTEDNESS OF BOND-AIDED COMPANIES TO UNITED STATES.

The total indebtedness of the several bond-aided companies to the United States on June 30, 1896, was as follows:

Union Pacific, including Kansas Pacific, principal of bonds issued, \$33,539,512, on which interest has accrued to the amount of \$57,071,757.46, on this there should be credited \$38,611,070.53 applied to the bond and interest and sinking-fund accounts, leaving the balance of debt on the above date \$52,000,198.93.

Central Pacific, including Western Pacific, principal of bonds issued, \$27,855,680; interest accrued, \$46,593,478.98; credits, \$16,167,149.56; balance of debt, \$58,282,009.42.

Sioux City and Pacific, principal of bonds, \$1,628,320; interest accrued, \$2,734,387.09; credits on account of transportation, \$246,659.49; balance of debt, \$4,116,047.60.

Central Branch Union Pacific, principal of bonds issued, \$1,600,000;

accrued interest, \$2,778,608.26; credits, \$642,884.88; balance of debt, \$3,735,723.38.

Under a decision of the Supreme Court the interest paid on these bonds by the United States does not become due from the companies until the maturity of the bonds. Up to June 30, 1896, there had matured subsidy bonds in the following amounts:

January 16, 1895, Central Pacific Railroad Company.....	\$2,362,000
January 1, 1896, Central Pacific Railroad Company.....	1,600,000
	<hr/>
	\$3,962,000
November 1, 1895, Kansas Pacific (now Kansas Division Union Pacific)	640,000
January 1, 1896, Kansas Pacific (now Kansas Division Union Pacific)	1,440,000
February 1, 1896, Union Pacific.....	4,320,000
	<hr/>
	6,400,000
January 1, 1896, Central Branch Union Pacific Railroad....	640,000
	3,962,000
	<hr/>
Total	\$11,002,000

CHAPTER 9

From Annual Report of Attorney-General for Year 1898.

EXHIBIT W, REPORT OF THE SPECIAL COUNSEL, FOR THE UNITED STATES IN THE CASES AGAINST THE UNION PACIFIC AND KANSAS RAILWAYS.

Omaha, Nebr., October 15, 1898.

Hon. John W. Griggs,

Attorney-General, Washington, D. C.

Dear Sir: In compliance with your telegraphic request to submit as soon as possible report of proceedings for the year in the cases against the Union Pacific and Kansas Pacific railways, I have the honor to submit the following report on behalf of Hon. George Hoadly, leading counsel in these matters, and myself, acting under the direction of yourself and your predecessor.

In the last report of Gov. Hoadly, dated November 16, 1897, occurs the following:

Thus, as far as the main line is concerned, this important litigation has happily ended to the great advantage of the Government, which will be reimbursed in full for all its advances by way of subsidy to the Union Pacific Railroad Company, with interest at 6 per cent per annum.

This has reference to the main line extending from Council Bluffs to the western terminal point, 5 miles beyond Ogden.

With reference to the Kansas Division in Kansas and Missouri the same report contains the following statement :

The sale of the Kansas Division in Kansas and Missouri now stands postponed until the 15th day of December next.

Upon application made to Judge Sanborn, December 13, 1897, on the part of the United States, the sale of the Kansas Pacific Division was postponed for a period of not less than sixty days, and thereafter W. D. Cornish, master in chancery, advertised the sale under the Government decree to take place at Topeka, Kansas, on the 16th day of February, 1898.

As the guarantee of the reorganization committee to bid \$45,754,059.99, which was afterwards increased to \$50,000,000, has reference to both the main line and the Kansas Division, and as the main line itself realized the full amount of the Government lien and claim thereon, \$58,448,223.75, it was thought that the only provision regulating a bid with respect to the Kansas Division was that provided by the decree, a copy of which is in the files of your office. This was not deemed adequate protection to the Government.

On the 8th day of February, 1898, under the power vested in the President by an act of Congress, entitled "An act authorizing the investigation of the book accounts and methods of railroads which have received aid from the United States, and for other purposes," passed March 3, 1887, President McKinley issued an Executive order which after reciting among other things as follows: "Whereas, in the opinion of the President, it is deemed necessary to the protection of the interest and preservation of the security of the United States in respect of its said lien and mortgages to redeem and clear off the aforesaid paramount liens and incumbrances by paying the sums lawfully due in respect thereof out of the Treasury, so that the United States shall thereupon become and be subro-

gated to all rights and securities heretofore pertaining to liens and mortgages in respect of which such payments shall be made," authorized the Secretary of the Treasury to pay out of the Treasury to the person or persons lawfully entitled to receive the same the amounts lawfully due upon the prior mortgages upon the Eastern and Middle Division of said railroad out of any money in the Treasury not otherwise appropriated

Thereafter, under your direction, a petition was prepared to be presented to Judge Sanborn, offering to redeem prior liens in such manner as the court should direct, and praying that thereupon the United States be held to be subrogated to all the rights of said prior lien holders, and that a receiver be appointed to take possession of the mortgaged premises and maintain and operate the same until Congress or the court otherwise provided, and that the sale fixed for February 16, 1898, be postponed

In order to further protect the United States you caused the necessary deposit to be made with W D. Cornish, master in chancery, to qualify the United States as a bidder at the sale, should that course become necessary, or be deemed advisable.

On the 12th day of February, 1898, Governor Hoadly and myself went to St. Louis for the purpose of presenting to Judge Sanborn the foregoing petition under instructions contained in your letter of February 9, 1898. We also received from you a Treasury draft for \$7,515,255.15, indorsed "payable to the order of Hon. Walter H. Sanborn, judge," for the purpose of redemption of prior liens, if necessary. In this letter you stated that in the opinion of the President, in which you concurred, if a bid to the Government could be assured of the principal of the Government debt, viz: \$6,303,000, the application for leave to redeem should be discontinued, and in-

structed us that, if the reorganization committee would agree in a binding manner, satisfactory to us, by which the Government would be assured of a bid at the sale sufficient to realize the principal of the Government claim, that we discontinue the proceedings to redeem and allow the sale to proceed as advertised.

Shortly before the time for presentation of the petition to the court we came to an agreement with the reorganization committee, represented by Winslow S. Pierce, satisfactory to us, that a bid of \$6,303,000 would be made at the sale, if the sale would be permitted to go on at the time advertised.

Announcement of this agreement was made in open court and the sale was permitted to proceed, and did proceed as advertised, when a bid was made, according to agreement, which realized to the United States the sum of \$6,303,000; sale was thereafter confirmed and the purchase money paid into the Treasury of the United States. The Government thus realized by the foreclosure and the sale of the main line and the Kansas Division the sum of \$64,751,233.75, being an increase of \$17,997,163.76 over the first guarantee bid tendered by the reorganization committee.

There then remained due the Government the unpaid interest of the Kansas Division debt. On the 2d day of April, 1898, I filed in the Circuit Court of the United States for the eighth circuit and district of Kansas, the court of primary jurisdiction, a petition for a deficiency decree for the sum of \$6,588,900.19, being the amount of said unpaid interest together with interest thereon. The Union Pacific Railway Company answered this petition, denying the right of the United States to a deficiency decree against the Union Pacific Railway Company, contending, in substance, that it did not assume to pay or become liable for the debts of the Kansas Pacific Rail-

way by its articles of union and consolidation with that company or otherwise; and that, on the contrary, by the articles of union and consolidation it was expressly provided that the Union Pacific Company should not assume the debts and liabilities of the constituent companies.

Such proceedings were thereafter had that on the 3d day of May, 1898, the matter came on hearing before Judge Sanborn, in St. Paul, Minn., when it was ordered that the petition, answers, and issue be referred to W. D. Cornish, special master, to hear, investigate, determine, and report.

On the 14th day of February, 1898, upon application of the receivers in the original Ames case, Judge Sanborn made an order which provided, among other things, that all persons who claimed any interest in or lien upon any of the funds or property in the hands of such receivers, as their creditors or as creditors of the Union Pacific Railway Company, file their respective claims with William D. Cornish, the special master, at Omaha, on or before the first day of July, 1898, and that any party to the suits, or who filed a claim in accordance with the order, might file an answer to the claim of any other party within thirty days after July 1, 1898, and contest such claim.

No further action was taken with respect to the petition for a deficiency decree, for the reason, among others, that should the claim be allowed it would still be necessary to file the same under the foregoing order and contest the right of the United States to an interest in the funds or property in the hands of the Union Pacific Railway Company receivers.

Within the time provided by this order I filed the claim of the United States with the master, setting forth the facts upon which the same was based, claiming the same amount as above stated in the petition for a deficiency decree.

A large number of claims, aggregating a great amount, have

been filed with the master under the foregoing order, and nearly every claimant has filed answer, contesting the right of every other claimant. These matters are still pending, but little testimony having been thus far taken. It is my intention at present to go to New York next Monday to make arrangements for taking testimony in the matter of the claim of the United States, and also in support of the contention of the United States in its answer made to other claims. I hope to close this matter up before the end of the year.

In the investigation of the claims filed as above stated I learned for the first time that on or about the 1st day of July, 1886, the Union Pacific Railway Company executed and delivered to the American Loan and Trust Company, as trustee, a certain deed of trust known, as termed, "Further security trust," wherein and whereby the railway company covenanted to pay over to said trustee certain moneys, or to deliver to it certain mortgage bonds of branches or extensions of the railroad of the Kansas Pacific Railway Company or of roads connected with the Kansas Pacific system or controlled by ownership of stock, said moneys or bonds to be held by the trustee thereby created for the benefit and further security of the first-mortgage bonds of the Kansas Pacific Railway Company, having priority over the lien of the United States for subsidy bonds issued to the Kansas Pacific Railway Company, and for the benefit, protection, and further security of the United States in respect of said subsidy bonds and interest thereon, and also for the benefit, protection, and further security of the consolidated mortgage bonds secured by a mortgage of May 1, 1879.

From time to time there was deposited with said trustee, under said trustee securities as follows:
Omaha and Republican Valley Railway Company

consolidated mortgage bonds	\$636,000
Junction City and Fort Kearney Railway Company first-mortgage branch bonds	171,000
Colorado Central Railroad Company first-mortgage bonds	197,000
Union Pacific, Lincoln and Colorado Railway Com- pany first-mortgage bonds	74,000
Kansas Pacific Railway Company consolidated mortgage bonds	116,000
Union Pacific, Denver and Gulf Railway Company consolidated mortgage bonds	149,000

Provision is made in said trust deed for the sale and exchange from time to time of the securities so deposited, and that such sales may be made at any time it shall be deemed advisable by the Union Pacific Railway Company.

On the 27th day of June, 1898, said trustee filed its bill of complaint in equity in the circuit court of the United States for the district of Massachusetts, setting forth the execution and terms of said further security trust, and in substance alleging that under the circumstances the Union Pacific Railway Company could not act in the premises; that the trustee deemed it advisable that said securities be sold, and praying the direction of the court with respect thereto; that the complainant be directed to sell said securities, and that the proceeds of said sale, after deducting the necessary expenses, be held by the trustee in lieu of said securities so sold upon the terms, conditions and trusts created by and declared in said trust deed. The only parties made defendants to this bill were the Union Pacific Railway Company and its receivers. A decree was entered as prayed, the securities sold, and there is now in the hands of said trust deed, the sum of about \$548,000.

The United States was not made party to, nor notified of,

the foregoing proceeding, all of which took place before I learned of the existence of said trust. The trust deed was never recorder, and, so far as I am aware, never came to the knowledge of the Attorney-General's office until communication with respect thereto was made by me.

Immediately I learned of the foregoing facts I wrote to the American Loan and Trust Company, as trustee, notifying it that the United States made claim to the securities and all the trust funds received by it under the further security deed.

Unless otherwise directed, I will file an original bill or intervene in the above-named cause on behalf of the United States, praying for an order or decree that the funds in the possession of said trustee under said trust deed be paid to the United States. From what I can learn of the securities and from the terms of the trust deed, I doubt the availability of questioning the proceeding whereby said securities were converted into cash.

I am not without confidence that said trust funds can be secured for the United States.

Permit me, in conclusion, to thank you for your specific and intelligent instructions and your appreciative regard and courtesy.

Respectfully submitted.

JOHN C. COWIN,

Special Counsel for the United States.

From Report of the Secretary of the Treasury, 1899.

On July 7, 1898, Congress enacted the following, which was one of the provisions of the general deficiency bill:

"Settlement with the Central Pacific and Western Pacific Railroads; That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General, and their successors in office, be, and they are hereby, appointed a commission

with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

“That such commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest and otherwise. And also provided, That said commission are hereby empowered to grant such time or times of payment by installment and at such rates of interest, to be not less than three per centum per annum, payable semi-annually, and with such security as to said commission may seem expedient: Provided, however, That in any settlement that may be made the payment and full discharge of said indebtedness shall not be postponed to exceed ten years and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: Provided further, That unless the settlement herein authorized be perfected within one year after the passage of this act, the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act con-

tained shall be held to waive or release any right, lien, or cause of action already held by the United States.

"That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

From Report of the Attorney-General, 1899.

PACIFIC RAILROAD MATTERS.

The deficiency appropriation act of July 7, 1898, appointed the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific bond-aided railroads upon such terms and in such manner as might be agreed upon by them or by a majority of them and the owners of said railroads, subject to the approval of the President.

An agreement for the settlement of this indebtedness was entered into between the said commissioners with the railroad companies on February 1, 1899. At that date the amount due the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific railroads was \$58,812,715.48, more than one-half of which was accrued interest upon the principal debt. The agreement of settlement provided for the funding of this amount into 20 promissory notes bearing date February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of \$2,940,635.78, or one-twentieth of the total amount due. The notes bear interest at the rate of 3 per cent per annum, payable semi-annually, and

have a condition attached to the effect that if default be made either in the payment of principal or interest of either of said notes or in any part thereof, then all of the said notes outstanding, principal and interest, shall immediately become due and payable notwithstanding any other stipulation of the agreement of settlement.

It was further agreed that the payment of the principal and interest of the notes shall be secured by the deposit with the United States Treasury of \$58,820,000 of face value of first refunding mortgage 4 per cent gold bonds, to be thereafter issued by the Central Pacific or its successor having charge of the railroads then owned by said company, such bonds to be part of an issue of not exceeding \$100,000,000 in all, and to be secured by mortgage upon all railroads, equipments, and terminals owned by said Central Pacific Railroad Company, such mortgage to be a first lien upon such property, or to be secured by the deposit as COLLATERAL of certain percentages of the outstanding bonds upon such property or on the different divisional parts thereof.

The notes provided for by this agreement were duly executed and delivered to the Treasurer of the United States in conformity with the terms of the agreement. In pursuance of another provision of the agreement, the four earliest maturing notes were purchased by Speyer & Co., March 10, 1899, and the proceeds, amounting to \$11,762,543.12, and accrued interest to the date of payment, \$35,771.02, in all \$11,798,214.14, were received and covered into the Treasury March 27, 1899, as part payment of the indebtedness of the Central Pacific and Western Pacific Railroad companies. The properties of the various companies comprising the Central Pacific system were subsequently conveyed to a new corporation called the Central Pacific Railway Company, which latter company

executed the mortgage and bonds provided for by the agreement of settlement. On October 7, 1899, bonds were delivered to the Treasury Department by the Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. The United States therefore holds the notes of the Central Pacific Railroad Company guaranteed by the Southern Pacific Railroad Company to the amount of \$47,050,172.36, bearing interest payable semiannually at the rate of 3 per cent per annum and secured by the deposit of an equal amount of first-mortgage bonds of the Pacific Railway Company, thus providing, beyond doubt or peradventure, for the sure and gradual payment of the whole of this subsidy debt, and providing in the meantime for the payment of interest at the rate of 3 per cent upon the unpaid balances.

In my report for the year 1898, I advised the Congress that the whole amount of principal and interest due on the Union Pacific subsidy had been realized and paid into the Federal Treasury, and that of the amount due upon the Kansas Pacific subsidy the whole amount of the principal, namely, \$6,303,000, had been paid in, leaving due to the Government only the accrued interest on the Kansas Pacific amounting to about \$6,500,000. I further reported that I had caused to be filed a claim on behalf of the United States on account of this deficiency against certain funds remaining in the hands of the receivers of the Union Pacific Railway Company, which claims, along with many others aggregating a large sum, were subject to investigation and subsequent adjudication. This matter has since been brought to a conclusion with the very satisfactory result that the United States procured a decree directing the receivers to pay on account of its deficiency debt out of the moneys in their hands as pro rata dividend upon its deficiency claim the

sum of \$821,897.70, which sum has recently been paid into the Treasury of the United States and is to be credited against the deficiency above mentioned.

The proceedings referred to in my last report pending against the American Loan and Trust Company of Boston as trustee for the purpose of securing on account of the Government's deficiency claim certain moneys in the hands of such trustee which represent the proceeds of securities mortgage for the benefit and further security of first-mortgage bonds of the Kansas Pacific Railway, and for the benefit, protection, and further security of the United States in respect to their subsidy bonds and interest thereon, have not yet been brought to a conclusion, but are being pressed with all due diligence, and before long I hope to be able to report the collection of a very substantial sum from this source in further reduction of the deficiency due the Government on this account.

The amounts paid or secured to be paid to the United States on account of Pacific Railroad subsidy claims since Nov. 1, 1897, will appear from the following table:

Union Pacific, cash	\$58,448,223.75
Kansas Pacific, cash	6,303,000.00
Central and Western Pacific, cash	11,798,314.14
Notes	47,050,172.36
Kansas Pacific, dividend on deficiency due U. S., cash	821,897.70
<hr/>	
Total	\$124,421,607.95

From Report of the Secretary of the Interior, 1899.

On July 7, 1898, Congress enacted the following, which was one of the provisions of the general deficiency bill:

"Settlement with the Central Pacific and Western Pacific Railroads: That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General, and their successors in office, be, and they are hereby appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

"That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: And also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest to be not less than three per centum per annum, payable semi-annually, and with such security as to said commission may seem expedient: Provided, however, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years, and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in the payment of either principal or interest or any part thereof, then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: Provided further, That unless the settlement herein authorized be perfected within one

year after the passage of this act, the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien or cause of action already held by the United States.

"That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

So that it appears that out of an indebtedness of about \$130,000,000, more than one-half of which consists of accrued interest, the Government has realized in cash or its equivalent the sum of \$124,421,670.95 within a period of less than two years.

Taking into account the enormous material benefits that have accrued to the country from the construction of these trans-continental lines of communication, and the advantage which the Government has had by way of reduced rates of transportation and service over them, the participation of the Government in the construction and maintenance of these enterprises has been fully justified, and the faith of the original promoters and projectors of these great lines has been proven to have had a substantial basis.

From the Washington Times, July 28th, 1908.

CENTRAL PACIFIC SETTLES ACCOUNT.

The Central Pacific Railroad closed its business relations with the Government today when its check for \$2,940,000, the

last payment under the funding act of 1889, was accepted by the Treasury Department.

The check was for the payment due February 1, 1909, but the returning wave of prosperity enabled the Central Pacific Railroad Company to avail itself of the advantage of paying in advance, and hence the arrival of the \$2,000,000 check. This closes the account between the railroad and Uncle Sam.

From Report of Attorney-General, 1898.

PACIFIC RAILROAD MATTERS.

In the annual report of this Department for the year 1897 a full account was given of all the proceedings in the cases then pending for the foreclosure of the Government subsidy liens and the other mortgages upon the Union Pacific Railroad and it was there stated that on November 1, 1897, this property, comprising what is known as the main line of the Union Pacific Railroad, extending from Council Bluffs, to the western terminal point, 5 miles beyond Ogden, with its branches, franchises, and equipments, was struck off and sold to purchasing trustees, on behalf of the mortgages, creditors and stockholders associated together for the reorganization of the company, for the sum of \$58,448,223.75, being the total amount due to the Government, as stated by the Secretary of the Treasury, including the sum of \$4,549,368.26, cash in the sinking fund. By the terms of the decree in the foreclosure sale this cash in the sinking fund was directed to be applied to the credit of the United States upon the confirmation of the purchase.

The purchasers of the property, in compliance with their

bid, have since paid into the Treasury an amount which, added to the sinking fund thus applied, aggregates \$58,448,-223.75 being the full amount of the principal and interest due the Government upon its subsidy, thus relieving the United States from any loss whatever upon their claim, and bringing to a final and most satisfactory termination this long-standing and troublesome subject.

The sale of the Kansas Pacific line, upon which the Government held a second-mortgage lien, having been, as stated in the report of 1897, postponed at the instance of the Government to December 15, 1897, was further, upon the application of the United States, postponed to the 16th day of February, 1898.

By the decree of the court in that case, an upset price on the sale of the property was fixed at a sum which would yield to the Government only \$2,500,000 upon its claim. The reorganization committee, in conference with this Department, declared its purpose of making no larger bid than that fixed by the decree of the court, so that the Government was confronted with a danger of receiving for its total lien upon this line, amounting to nearly \$13,000,000, principal and interest, only the above-mentioned sum of \$2,500,000. Believing that the interests of the Government required that an effort should be made to obtain a larger sum, the President of the United States was advised by me that under the act entitled "An act authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes," passed March 3, 1887, the Government had the right to redeem the incumbrances upon the property which were prior to the lien of the Government subsidy by paying the sums lawfully due in respect thereof out of the Treasury of the United States, so that the United States should thereupon become subrogated to all rights and securities there-

tobefore pertaining to the liens and mortgages in respect of which such payments should be made. Accordingly, on the 8th day of February, 1898, in pursuance of the act of 1887, the President, by Executive order, authorized the Secretary of the Treasury to pay out of the Treasury to the person or persons lawfully entitled to receive the same the amounts lawfully due upon the prior mortgages upon the eastern and middle division of said railroad out of any money in the Treasury not otherwise appropriated. Thereupon, under my direction, a petition was prepared to be presented to the court, offering to redeem said prior liens in such manner as the court might direct, and praying that thereupon the United States might be held to be subrogated to all the rights of said prior lien holders, and that a receiver might be appointed to take possession of the mortgaged premises, and maintain and operate the same until Congress or the court otherwise provided, and that the sale fixed for February 16, 1898, might be postponed.

Moved by this action of the Government for the redemption of the prior liens and the postponement of the sale, the reorganization committee agreed, provided said petition should be withdrawn and the sale allowed to proceed, that they would bid at the sale for said road a sum which would realize to the Government the whole amount of the principal of its debt, namely \$6,303,000. Believing from all the information this Department was able to obtain that no better price than this could be obtained at a later date if the sale should be postponed, and appreciating the embarrassment and difficulty under which the Government would labor if it should become the purchaser of the property at the sale in the absence of any legislation by Congress which would enable any of the Executive Departments to take charge of and operate the road, it was deemed best to permit the sale to proceed, upon the guar-

antee of a minimum bid which would realize to the Government the whole principal of its debt, and the sale thereupon took place, the property being struck off the representatives of the reorganization committee at a figure which yielded to the Government the sum above mentioned. It will thus be perceived that the Government secured an advance of \$3,803,000 on account of its lien, over and above the sum which the court had fixed as the upset price, and which the reorganization committee had declared was the maximum which they were willing to pay for the property.

The total result of these proceedings against the Union Pacific system, embracing the main line and the Kansas Pacific line, is that the Government has received on account of its subsidy claim the sum of \$64,751,223.75, which is an increase of \$18,997,163.76 over the sum which the reorganization committee first agreed to bid for the joint property, leaving due to the Government only the interest on the Kansas Pacific subsidy, amounting to about \$6,500,000.

Under my direction, on April 2, 1908, application was made to the circuit court of the United States for the eighth circuit for a deficiency decree for the amount of said unpaid interest. The Union Pacific Railway Company answered this petition, denying the right of the United States to a deficiency decree, contending in substance, that it did not assume to pay or become liable for the debts of the Kansas Pacific Railway by its articles of union and consolidation with that company or otherwise, and that, on the contrary, by the articles of union and consolidation it is expressly provided that the Union Pacific Company should not assume the debts and liabilities of the constituent companies. This application was subsequently referred for hearing to William D. Cornish, special master, and the matter still rests in that condition, proceedings thereon

having been suspended on account of reasons which are now stated.

On the 14th day of February, 1898, upon the application of the receivers in the original Ames foreclosure case, the court made an order providing, among other things, that all persons claiming any interest in or lien upon any of the funds or property in the hands of the receivers, either as creditors of the receivers or as creditors of the Union Pacific Railway Company, should file their claims with William D. Cornish, special master, on or before the 1st day of July, 1898, and that any party to the suits, or who filed a claim in accordance with the order, might file an answer to the claim of any other party within a limited time. By my direction there was filed with said master a claim of the United States against the funds in the receivers' hands, setting forth the facts upon which the same was based and claiming the same amount as before stated in the petition for a deficiency decree. Many other claims, aggregating a great amount, have been filed with the master under the foregoing order, and nearly every claimant has filed an answer contesting the right of every other claimant. These matters are still pending, and testimony therein is now being taken. The proceedings in the latter matter practically superseded those filed to obtain a decree for deficiency, and rendered the further prosecution of the latter application unnecessary.

There is a sum amounting to about \$548,000 in the hands of the American Loan and Trust Company of Boston, as trustee which represents the proceeds of certain securities mortgaged to said trustee for the benefit and further security of the first-mortgage bonds of the Kansas Pacific Railway, having priority over the lien of the United States, and for the benefit, protection, and further security of the United States, in respect of such subsidy bonds and interest thereon. Due pro-

ceedings have been taken to present the rights of the Government as to this fund, and to obtain the same, or so much thereof as the Government may be entitled to according to the equities of the case.

It is hoped and expected that from the two sources mentioned a substantial sum will be collected by the Government to be applied toward the satisfaction of the balance remaining due on the Kansas Pacific claim.

The indebtedness of the Central Pacific Railroad Company to the Government having become due on the 1st of January, 1898, and default in the payment thereof having been made by the company, I took steps to prepare the necessary papers to foreclose the Government's lien. Before the preparation of the foreclosure papers was completed, Congress by act approved July 7, 1898, enacted the following:

That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, that any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: And also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not

less than three per centum per annum, payable semiannually, and with such security as to said commission may seem expedient: Provided, however, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years, and the whole amount, principal and interest, shall be paid in equal semi-annual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest, or any part thereof, then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: Provided further, That unless the settlement herein authorized be perfected within one year after the passage of this act the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien or cause of action already held by the United States.

COMPANIES' FIRST-MORTGAGE BONDS.

The act of 1864 authorized the issuance by the companies of first mortgage bonds of even tenor, date, and amount, as the subsidy bonds, to constitute a prior lien to that of the Government. Under this act bonds were issued by the companies in the following amounts: Union Pacific (including Kansas), \$33,532,000; Central Pacific (including Western), \$27,853,000; Sioux City and Pacific, \$1,628,000; Central Branch Union Pacific, \$1,600,000. Of the Central Pacific bonds,

\$2,995,000, which matured on July 1, 1895, were extended with the consent of the holders, for two and one-half years, with interest reduced to 5 per cent, and an installment of Western Pacific bonds, maturing in December, 1895, was taken up by a new issue. The Union Pacific having defaulted in the payment of both principal and interest, foreclosure proceedings have been instituted and are pending.

BONDS HELD IN THE SINKING FUND.

The amounts required to be applied by the companies to the sinking fund established by the Thurman Act have been largely invested in the bonds of the companies, which are prior lien to that of the United States, under authority granted by act of Congress approved March 3, 1887. The following statement shows the kind and amount of bonds held in the sinking fund to the credit of the Union and Central Pacific companies, respectively, on June 30, 1896:

	Union Pacific fund.	Central Pacific fund.	Total.
United States bonds, 5 per cent.....	\$915,750	\$125,000	19,624,250
United States bonds, 6 per cent.....	64,000	2,130,000	2,194,000
Union Pacific R. R. bonds.....	6,367,000	939,000	7,306,000
Central Pacific R. R. bonds.....	3,230,000	1,672,000	4,902,000
Central Branch Union Pacific R. R. bonds	1,025,000	163,000	1,118,000
Sioux City & Pacific R. R. bonds.....	716,500	32,000	748,500
Western Pacific R. R. bonds.....	350,000	117,000	467,000
Eastern Division Union Pacific R. R. bonds	1,478,000	300,000	1,778,000
Total.....	\$14,146,250	\$5,478,000	\$19,624,250

These are past due and still unpaid \$3,432,000 in the Union Pacific fund, and \$643,000 in the Central Pacific fund, total \$4,075,000, being bonds of the Union Pacific Eastern Division

(now Kansas), Union Pacific, and Central Branch Union Pacific.

The Union Pacific Railroad Company (now the Union Division of the Pacific Railway Company) was chartered under the Act of July 1, 1862, and Government bonds, bearing 6 per cent interest, to be secured by a first mortgage on the road, were issued as follows:

Under the authority given by the Act of 1864, the company issued its first mortgage bonds as follows:

Date of issue.	Amount.	Date of Maturity.
Eastern division, Aug. 1, 1865.....	\$2,240,000	Aug. 1, 1895
Middle division, June 1, 1866.....	4,063,000	June 1, 1896
Total.....	\$6,303,000	

The Denver Pacific Railway and Telegraph Company was authorized by act of Congress approved March 3, 1869, to construct that part of the Kansas Pacific line from Denver to Cheyenne and to receive a transfer from that company of a proportionate share of its land grant. This company, however, received no subsidy in bonds.

The portions of road of the Union Pacific Railway Company which were constructed by the aid of a subsidy in bonds are as follows: Bridge junction, Omaha, Nebr., to the junction with the Central Pacific, 5 miles west of Ogden; Kansas City, Mo., to a point near Boaz, Kans. The Supreme Court has decided (99 U. S., 455) that the subsidy bonds are a lien which is confined to the bond-aided portion of the road, and a percentage of net earnings is demandable by the United States from that portion only.

The act of July 2, 1864, requires the company to pay annually to the United States 5 per cent of its net earnings, and one-half of the charges for transportation on account of the Government is retained and applied to the payment of the

bonds issued by the United States and interest thereon. This was amended by the act approved May 7, 1878, known as the Thurman Act, which requires the retention of the whole amount of compensation for services rendered the Government by the company, one-half applied to the liquidation of interest on the subsidy bonds and the other half to be carried to a sinking fund to meet the debt at maturity; it also requires the annual payment by the company of an amount sufficient to make the 5 per cent of net earnings and the whole amount of compensation for transportation equal to 25 per cent of the net earnings of the road for that year. The Thurman Act applies to the Union Division only.

The excess of interest paid by the United States on account of the subsidy bonds over all credits, including both divisions, amounted on June 30, 1896, to \$52,000,198.93.

TO THE HONORABLE THE JUDGES OF THE CIR-
CUIT COURT OF THE UNITED STATES WITHIN
AND FOR THE EIGHTH JUDICIAL CIRCUIT
AND DISTRICT OF NEBRASKA.

That the sixth section of the said act required said companies to transmit telegraphic dispatches and transport mails, troops, and munitions of war, supplies and public stores upon said railroads for the Government, whenever required to do so, and that the Government should at all times have the preference in the use of the same for all said purposes at fair and reasonable rates of compensation, not exceeding the amount paid by private parties for the same kind of services and that all compensation for services rendered for the Government should be applied to the payment of said bonds and interest until the whole amount should be fully paid, and that after said railroads should respectively be completed, until the full

payment of said bonds and interest, that at least 5 per centum of the net earnings of said road should be annually applied to the payment thereof. That the total amount of credits for payments of interest made by the Union Pacific Railroad Company, the Kansas Pacific Railroad Company, and the Union Pacific Railroad Company, under said sixth section, was, on June 30, 1893, \$17,971,156.65.

That by the eighteenth section of said act it was enacted that "the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."

That afterwards, by the act of Congress approved July 2, 1864, amendatory of the said act approved July 1, 1862, it was provided that the said railroad companies might respectively issue their first mortgage bonds on their respective railroad and telegraph lines to amounts not exceeding the amount of the said bonds of the United States, and of even tenor and date, time and maturity, rate and character of interest, with the said bonds authorized to be issued to said railroad companies respectively, and that the lien of the said United States bonds should be subordinate to that of the bonds of any or either of said companies authorized to be issued on their respective road, property and equipments, "except as to the provisions of the sixth section" of the act of July 1, 1862, "relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the Government of the United States."

And that by the twenty-second section of said act it was provided that "Congress may at any time alter, amend, or repeal this act."

That under the authority of said acts, and the acts amendatory thereto, the Union Pacific Railroad Company, before its consolidation hereinafter described, had constructed a railroad and telegraph line with the necessary fixtures and appurtenances, including bridges and approaches, and owned the necessary equipment for the operation thereof, said line extending from Council Bluffs, in the State of Iowa, to a point west of Ogden, in the Territory of Utah, a distance of 1,042.93 miles, and the Kansas Pacific Railway Company has built a railroad and telegraph line with the necessary fixtures and appurtenances, including bridges and approaches, and including a branch to Leavenworth, and had purchased and owned the necessary equipment for the operation thereof, said line extending from Kansas City, in the State of Missouri to Denver, in the State of Colorado, a distance of 642.94 miles, and said Leavenworth branch having a total mileage of 31.93 miles, and that the Denver Pacific Railway and Telegraph Company had built a line of railway from Denver, in the State of Colorado to Cheyenne, now in the State of Wyoming, with the necessary fixtures and appurtenances, including bridges and approaches, a distance of 104.6 miles, and had purchased and owned the necessary equipment for the operation thereof.

And the said Attorney-General for the United States of America gives the court here to understand and be informed that the nature and extent of the claims and liens asserted or which may be asserted against and upon the property of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, and since their consolidation aforesaid, against and

upon the property of the said Union Pacific Railway Company.

EXHIBIT A.

(Title Court and Cause.)

Third and final report of William D. Cornish, Special Master, under the Decree of Foreclosure entered herein.

To the Honorable the Circuit Court of the United States for the District and in the cause above entitled:

I hereby respectfully report that having received payment of the bid of the purchasers at the sale made by me on November 2nd, 1897, under the decree of foreclosure herein, and having made and delivered my deed of the property sold to Union Pacific Railroad Company, the assignee of said purchasers, all as heretofore reported by me herein, I have paid out and disposed of the proceeds of said sale and have performed the further duties imposed upon me in respect of said sale by said decree of foreclosure as follows:

FIFTH.

There are now outstanding and unpaid of the said mortgage bonds, and coupons 13 bonds which matured July 1, 1897, and prior thereto, being Bonds Nos. 1036, 1693, 4187, 5077, 7354, 7399, 7665, 7768, 7814, 8185, 8467, 8470, 8471, upon each of which bonds there is applicable to be paid out of said purchase money the sum of \$1,034 aggregating\$ 13,442.00

Eleven bonds which matured according to their tenor on Jan. 1, 1898, being bonds Nos. 12102, 12532, 13435, 15526, 13909, 15906, 15907, 15908,

15909, 15910, 15924, upon each of which bonds with the coupon maturing January 1, 1898, attached there is applicable to be paid out of said purchase price the sum of \$1,034 aggregating.... 11,374.00

Twenty-one bonds maturing according to their tenor July 1, 1898, being bonds Nos. 16377, 17103, 18644, 19461, 20271, 22316, 22317, 22318, 22319, 22320, 22901, 22902, 22903, 22904, 22905, 22906, 22907, 22908, 22909, 22910, 24104, upon each of which bonds with the coupons maturing January 1, 1898, and July 1, 1898, attached here is applicable to be paid out of said purchase price the sum of \$1,034 aggregating 21,714.00

Three bonds maturing according to their tenor Jan. 1, 1899, being Nos. 28411, 28574, 28688, upon each of which bonds with the coupons maturing Jan. 1, 1898, July 1, 1898, Jan. 1, 1899, attached here is applicable to be paid out of said purchase price the sum of \$1,034 aggregating..... 3,102.00

The several coupons above referred to maturing on Jan. 1, 1898, are entitled to be paid, if separately presented at the rate of \$30.10 each, the bonds from which such coupons were detached being, in such case, entitled to receive only the sum of \$1,003.90.

The coupons maturing July 1, 1898, or Jan. 1, 1898, issued with any said bonds are not entitled to be paid separately in any sum whatever, but are to be surrendered upon payment of the bond to which they belong as a part thereof.

There are also outstanding two coupons matur-

ing Jan. 1, 1898, one detached from bond No. 23126, each of which coupons is entitled to be paid out of said purchase at \$30.10..... 60.00

The amount so applicable to be paid upon all of said bonds and coupons outstanding as above stated in the amount of.....\$ 49,692.20

SIXTH.

In accordance with the requirements of the decree herein I have deposited with the Clerk of the United States Circuit Court for the District of Nebraska, to be applied in payment of said outstanding bonds and coupons in the several amounts as herein stated to be applicable thereto, the total sum of \$49,692.20 together with the sum of \$496.93, being one per cent upon said amount for Clerk's costs, in all the sum of \$50,189.13, and have reported to said Clerk of the Court the amount applicable to the payment of each of such bonds and coupons and the numbers and amounts thereof, a copy of which report is hereto attached and marked Exhibit E, and have received from said Clerk of the Court his receipt for said deposit the original or a copy of which receipt is hereto attached and marked Exhibits F.

SEVENTH.

There remained in my hands undisposed of after making said deposit with the clerk of the court as aforesaid of the moneys derived by me from the purchasers at said sale the sum of \$15,598.11, which sum I have returned and paid over to Union Pacific Railroad Company, as the assignee of the purchasers at said sale, and have taken its receipt therefor, a duplicate original of which receipt is hereto attached and marked Exhibit G.

EIGHTH.

Summary of Receipts and Disbursements.

Amount received from the purchasers	\$5,373,249.04
Amount paid on bonds and coupons	\$5,307,461.80
Amount deposited in court.....	50,189.13
Amount returned to purchasers	15,598.11
	<hr/>
	\$5,373,249.04

NINTH.

No moneys, bonds or coupons received by me as Special Master herein in my possession and so far as I am advised my duties as such Special Master have been fully performed.

Respectively submitted,

W. D. CORNISH,
Special Master.

Dated August 14, 1899.

EXHIBIT "E" W. D. C.

(Title Court and Cause.)

UNION PACIFIC FIRST MORTGAGE.

To the Clerk of the United States Circuit Court for the District of Nebraska.

Complying with the directions and requirements of the final decree of foreclosure entered in the above cause on the 29th day of July, 1897, I hereby report that I have ascertained and received the full amount derived and derivable from all sources on account of the sale of the property provided to be made by me under said decree, and that after receiving from the purchasers at said sale in part payment of the purchase price of

said property certain of the bonds and coupons receivable for such purposes under the provisions of said decree, I fixed the 20th day of January, 1898, as the time on which bonds or coupons entitled to payment out of said purchase price should be presented to me for such payment. Said date having passed and such bonds and coupons as have been presented to me for payment out of the proceeds of sale having been paid by me out of such proceeds of said sale, I have ascertained and now report to you that the unpresented bonds and coupons now outstanding are as follows:

Thirteen bonds secured by the mortgage foreclosed upon herein, being Nos. 1036, 1693, 4187, 5077, 7354, 7399, 7665, 7768, 7814, 8185, 8467, 8470, 8471, maturing according to their tenor, on July 1, 1897, or prior thereto, upon each of which bonds with coupons attached there is applicable to be paid out of the moneys derived from the sale of the property under said decree the sum of \$1,034\$ 13,442.00

Eleven bonds secured by the mortgage foreclosed upon herein, being Nos. 12102, 12532, 13435, 13909, 15526, 15909, 15907, 15908, 15910, 15924, maturing according to their tenor, on Jan. 1, 1898, and upon each of which bonds with the coupons maturing Jan. 1, 1898, attached there is applicable to be paid out of the moneys derived from the sale of the property under said decree the sum of \$1,034 11,374.00

Twenty-one bonds secured by the mortgage foreclosed upon herein, being Nos. 16377, 17103, 18644, 18461, 20271, 22316, 22317, 22318, 22319, 22320, 22901, 22902, 22903, 22904, 22905, 22906,

22907, 22908, 22909, 22910, 24104, maturing according to their tenor, on July 1, 1898, upon each of which bonds with the coupons maturing January 1, 1898, and July 1, 1898, attached there is applicable to be paid out of the moneys derived from the sale of the property under said decree the sum of \$1,034	21,714.00
Three bonds secured by the mortgage foreclosed upon herein, being Nos. 28411, 28574, 28688, maturing according to their tenor on Jan. 1, 1899, upon each of which bonds with the coupons maturing Jan. 1, 1898, July 1, 1898, and Jan. 1, 1899, attached there is applicable to be paid out of the moneys derived from the sale of the property under said decree the sum of \$1,034	3,102.00
Two coupons maturing Jan. 1, 1898, one detached from bond No. 17533 and one detached from bond No. 23126, each in the sum of \$30.10.....	60.20

\$ 49,692.20

Should any of the coupons maturing by their terms Jan. 1, 1898, belonging to the outstanding bonds above referred to be presented separately such coupons are to be paid at the amount of \$30.10 in bonds from which such coupons were detached being, in such cases entitled to receive only the sum of \$1,003.90.

Should any of the coupons maturing by their terms July 1, 1898, or Jan. 1, 1899, belonging to the bonds above referred to be presented separately no payment should be made thereon, such coupons being properly presented for payment thereon, only as a part of the bond with which they were issued, and are included in the amount allotted to the bond as above stated.

The aggregate of said amounts so applicable to said bonds and coupons is the sum of \$49,692.20. Clerk's fees of one per cent on said amount is \$496.93 and the total of said amount, with the clerk's fees of one per cent added thereto, is the sum of \$50,189.13.

I herewith deposit in the registry of this court in this cause, for the purpose of making payment of said several amounts upon said bonds and coupons, the said sum of \$50,189.13, by presenting you my check upon the Mercantile Trust Company of New York, certified and payable to your order, in said amount. Yours respectfully,

WM. D. CORNISH,
Special Master.

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